

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

MOAEC TECHNOLOGIES, LLC, Plaintiff, v. SPOTIFY USA, Inc., Defendant.	Case No.: 18-cv-377-LPS JURY TRIAL DEMANDED
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**MOAEC TECHNOLOGIES, LLC’s FIRST AMENDED COMPLAINT
FOR PATENT INFRINGEMENT**

Plaintiffs MOAEC Technologies, LLC (“MOAEC” or “Plaintiff”) files this Complaint against Defendant Spotify USA, Inc. (“Defendant” or “Spotify”), and alleges the following:

NATURE OF THE ACTION

1. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*

PARTIES TO THE ACTION

2. Plaintiff MOAEC Technologies, LLC, is a Florida limited liability corporation with corporate offices located at 990 Biscayne Boulevard, Suite 503, Miami, Florida 33132.

3. Upon information and belief, Spotify USA, Inc., is a corporation organized and existing under the laws of Delaware, with a place of business at 45 West 18th St., 7th Floor, New York, NY 10011, and can be served through its Delaware registered agent, National Registered Agents, Inc., 160 Greentree Dr., Suite 101, Dover, DE 19904. Upon information and belief, Spotify USA, Inc., sells and offers to sell products and services throughout the United States, including in this judicial district, and introduces products and services into the stream of commerce and that incorporate infringing technology knowing that they would be sold in this

judicial district and elsewhere in the United States.

JURISDICTION, VENUE, AND CHOICE OF LAW

4. This is an action for patent infringement arising under the Patent Laws of the United States, Title 35 of the United States Code.

5. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

6. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b), (c), (d) and/or 1400(b).

7. On information and belief, Defendant is subject to this Court's general and specific personal jurisdiction because Defendant has sufficient minimum contacts within the State of Delaware and this District, pursuant to due process and/or the Delaware Long Arm Statute (10 Del. Code § 3104), because Defendant purposefully availed itself of the privileges of conducting business in the State of Delaware and in this District, because Defendant regularly conducts and solicits business within the State of Delaware and within this District, and because Plaintiff's causes of action arise directly from Defendant's business contacts and other activities in the State of Delaware and this District. Further, this Court has personal jurisdiction over Spotify USA, Inc., because it is incorporated in Delaware and has purposely availed itself of the privileges and benefits of the laws of the State of Delaware.

FACTUAL ALLEGATIONS

8. This lawsuit asserts infringement of U.S. Patent No. 6,232,539 (the "'539 Patent"), issued on May 15, 2001. The patent is entitled "Music Organizer and Entertainment Center." A true and correct copy of the original patent certificate is attached as Exhibit A. MOAEC Technologies LLC is the owner of all right, title and interest in the '539 Patent.

9. The inventors of the '539 Patent are Brian Looney, with Dale R. McMullin, Joseph

Pasciuto, and Edward T. Doyle.

10. Brian Looney, the primary inventor, had been an apprentice DJ to a family friend since the early 1980s. Mr. Looney assembled his own music library and began to act as a DJ for birthday parties and other events, but needed a way to access any music on hand, instantly, after being provided only a minimum of helpful information. That library also had to be able to adapt to the constantly changing formats in which the music industry sold music in the 1980s and 90s.

11. As a solution to the problem, Mr. Looney developed an invention, disclosed in the '539 Patent, to organize an entire collection of music and access it through a touch-screen, with instant results, such that users could customize a playlist by mood, beats-per-minute, and other categories devised by the content provider.

12. Mr. Looney dubbed his invention a "Music Organizer and Entertainment Center," or MOAEC.

13. The claims of the '539 patent recite an invention that is not merely the routine or conventional use of electronic devices for music file playback. Instead, among other things, the invention adds new features to deliver content, and integrate application interfaces and other protocols, together on shared networks. The '539 patent claims thus include improvements for, for example, storing music information in association with a set of predetermined flags, including an ownership category flag, and permitting user-customizable playback of music, based in part on the flags.

14. In particular, the '539 patent permits the user to know whether she: 1) possesses the music file on her storage device (usually through a download), 2) only has access to play the music file (usually through streaming), or 3) neither owns nor has access to the song. At the time of the invention, this innovation was neither routine or conventional, nor could it be extrapolated

from the prior art by one versed in the technology.

15. Further, the '539 patent allows the system to seamlessly represent a larger music database under limited local storage and bandwidth conditions.

16. As such, the claims of the '539 Patent do not merely recite the performance of some business practice known from the pre-Internet world along with a requirement to perform it on the Internet. Instead, the claims of the '539 patent recite one or more inventive concepts that are rooted in computerized electronic data communications networks, and an improved method to deliver content and provide interface among different accounts and computing systems.

17. Accordingly, each claim of the '539 patent recites a combination of elements sufficient to ensure that the claim in practice amounts to significantly more than a patent on an ineligible concept.

18. From 2001 through 2007, Mr. Looney sold his music organizer and entertainment center at trade shows for various industries and by direct sales to consumers and business owners, including individuals in the sports and entertainment industries. Mr. Looney's products were eventually sold to customers in forty-three states and nine countries.

19. On November 14, 2007, the inventors assigned the patent to Looney Productions LLC, which merged into MOAEC, Inc., effective September 3, 2009. MOAEC, Inc., in turn assigned the '539 Patent to MOAEC Technologies LLC on April 27, 2015.

COUNT I

DIRECT INFRINGEMENT OF U.S. PATENT NO. 6,232,539

20. Plaintiffs incorporate by reference all prior allegations of this Complaint.

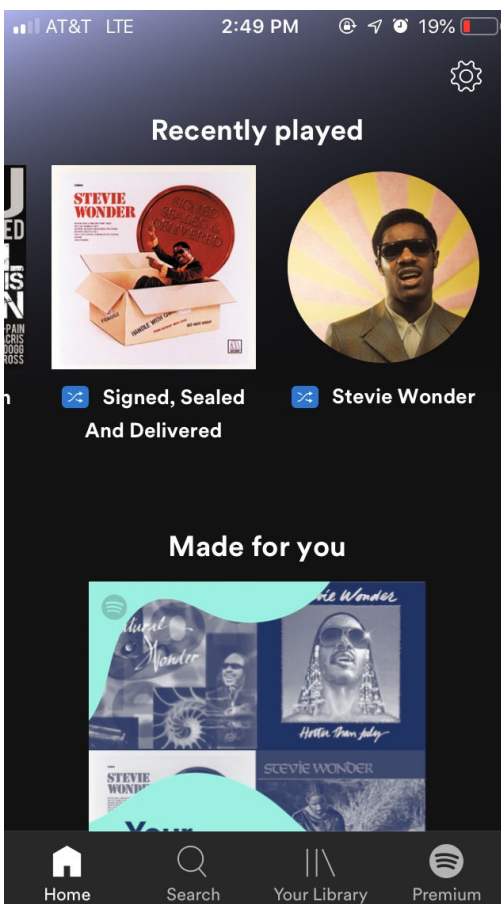
21. Plaintiff is the assignee and owner of all right, title and interest in and to the '539 patent, including the right to assert all causes of action arising under the patents and the right to any remedies for infringement of them.

22. Upon information and belief, each Defendant has and continues to directly infringe at least claims 1, 2, 6–7, 9, 15–16, 19–21, and 24 of the '539 patent by making, using, selling, importing, and/or providing and causing to be used without authority within the United States, a music organizer and entertainment center that stores and plays compressed data defining a plurality of individual music selections and associated category flags, customizable by a user through a graphical interface through requests to the service provider. The accused embodiments include computer and smartphone applications that permit the organization and selection of music by a user through a graphical interface, and user-customizable playback according to category flags placed on the plurality of music selections, including an ownership category flag (the “Accused Instrumentalities”). The Accused Instrumentalities include at least the Spotify application, including the Free, Premium, and Premium for Family services, and systems implementing these services (*e.g.*, applications, websites, and devices).

23. In particular, claim 1 of the '539 Patent generally recites a music organizer and entertainment center comprising: a storage device for storing compressed data defining a plurality of individual music selections and associated category flags, wherein the storage device includes a file having individual music selections available from a service provider, constructed and arranged so that a user can identify each of the individual music selections whereby the individual music selections can be requested from the service provider; a processor that retrieves selections and the associated category flags from the storage device based upon user selection of predetermined of the categories; a data decompressor that translates the compressed data into playable digital music data; a network interface for receiving the compressed data from a remote source over a network for download into the storage device; and a graphical user interface display having a plurality of selectable screens, at least one of the selectable screens including a plurality

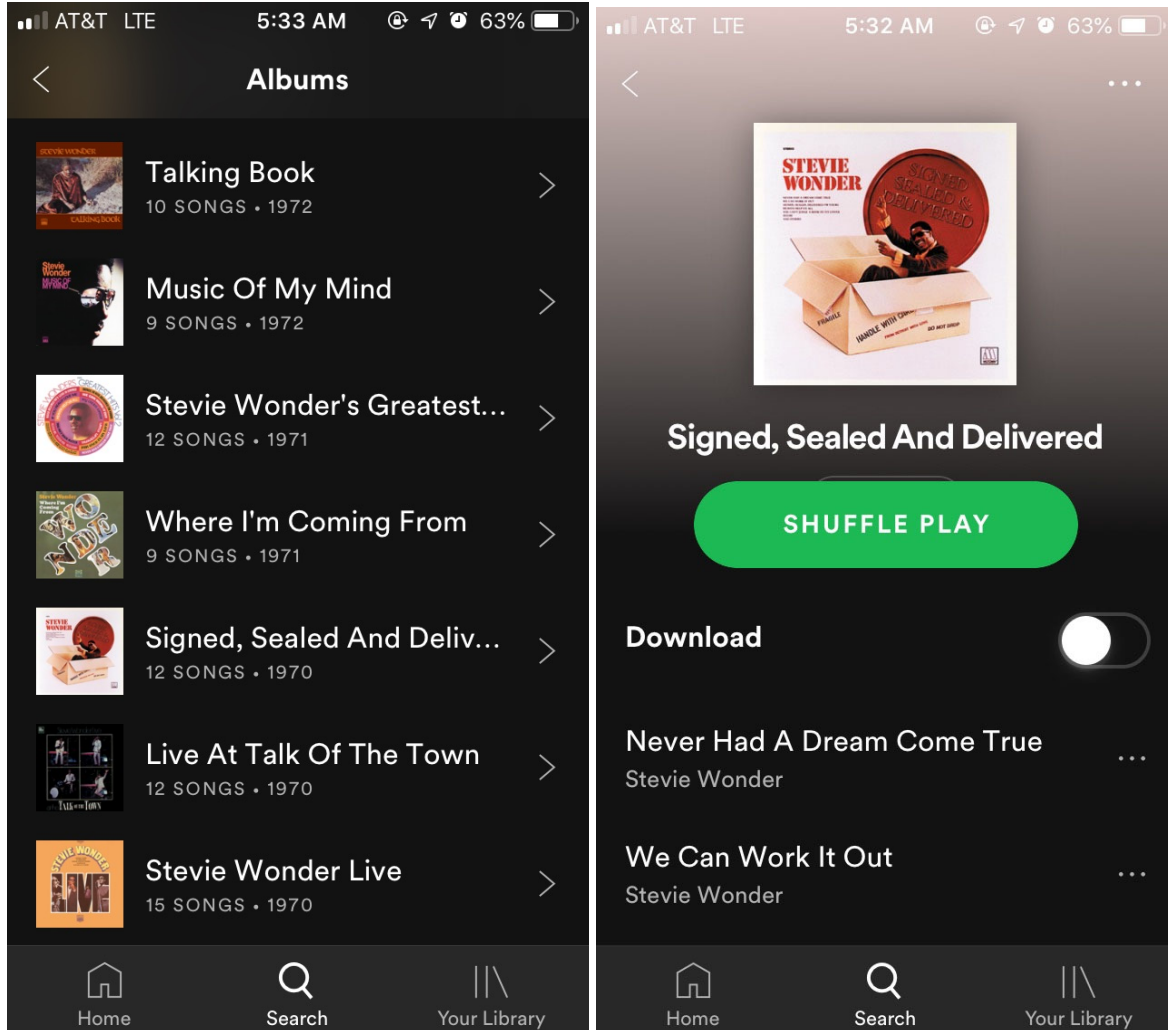
of category buttons constructed and arranged so that when a predetermined of the category buttons is activated, music selections having category flags matching the predetermined category of a respective of the buttons are selected and listed on the display; wherein one of the category flags comprises an ownership category flag that indicates which music selections from the list of all music selections are currently resident in the storage device.

24. On information and belief, Accused Instrumentalities include at least the Spotify application, including the Free, Premium, and Premium for Family services, and systems implementing these services (*e.g.*, applications, websites, and devices), contain a music organizer and entertainment center:



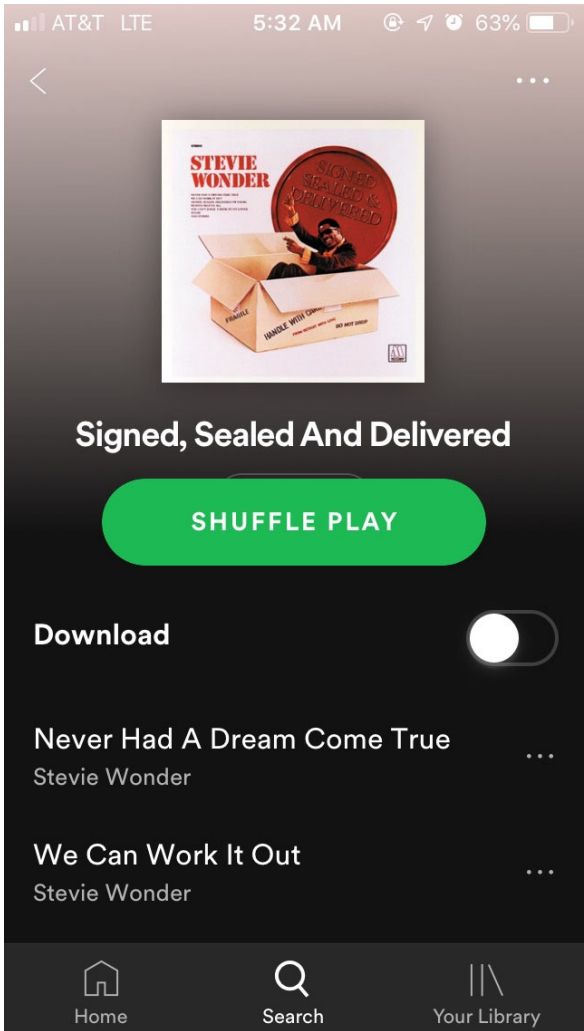
25. The Accused Instrumentalities contain a storage device for storing compressed data

defining a plurality of individual music selections and associated category flags:

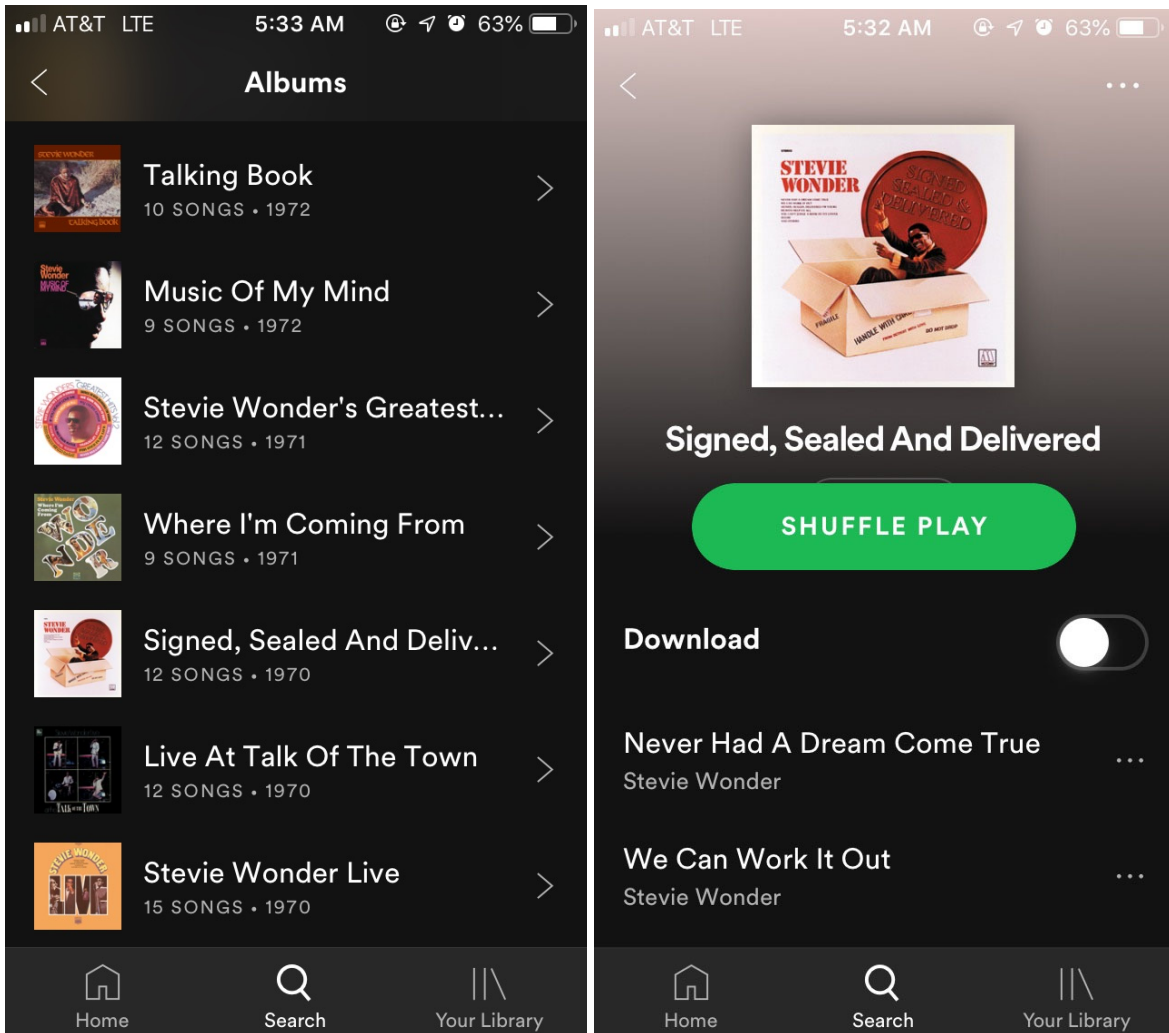


See also <https://www.cnet.com/news/apple-music-vs-spotify-is-there-a-difference-in-sound-quality>.

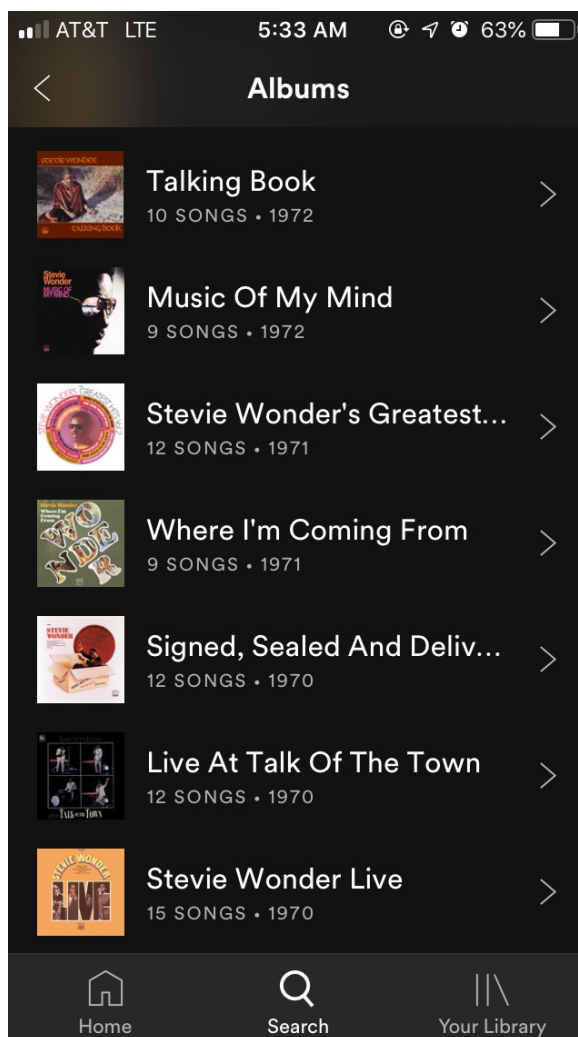
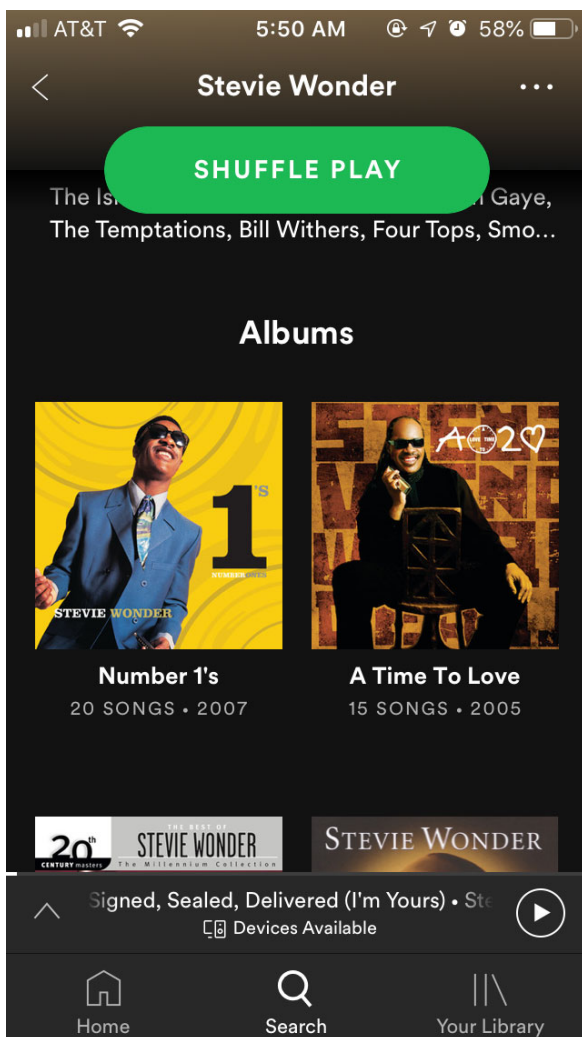
26. The storage device of the Accused Instrumentalities includes a file having individual music selections available from a service provider:

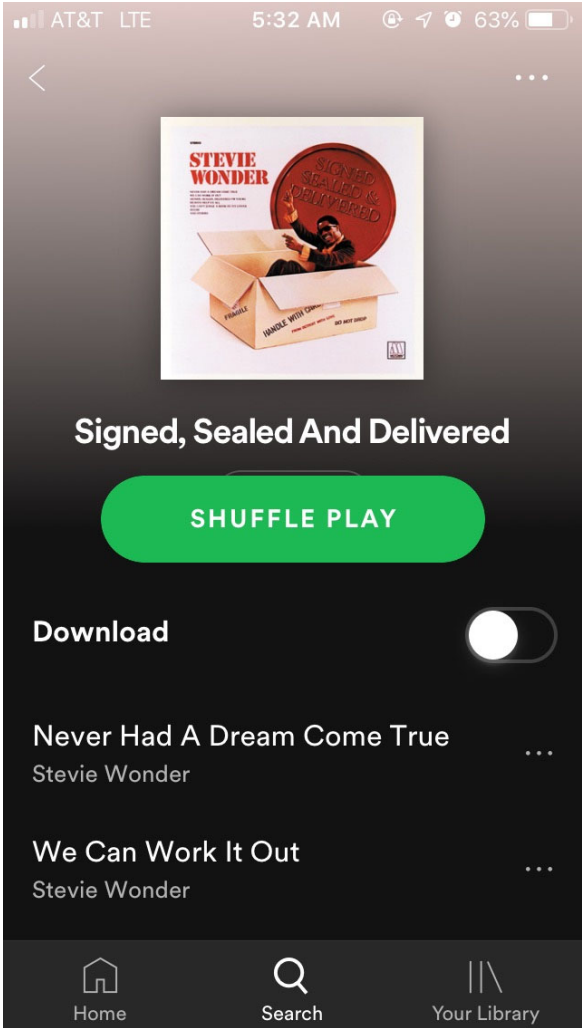


27. The Accused Instrumentalities have files that are constructed and arranged so that a user can identify each of the individual music selections whereby the individual music selections can be requested from the service provider:

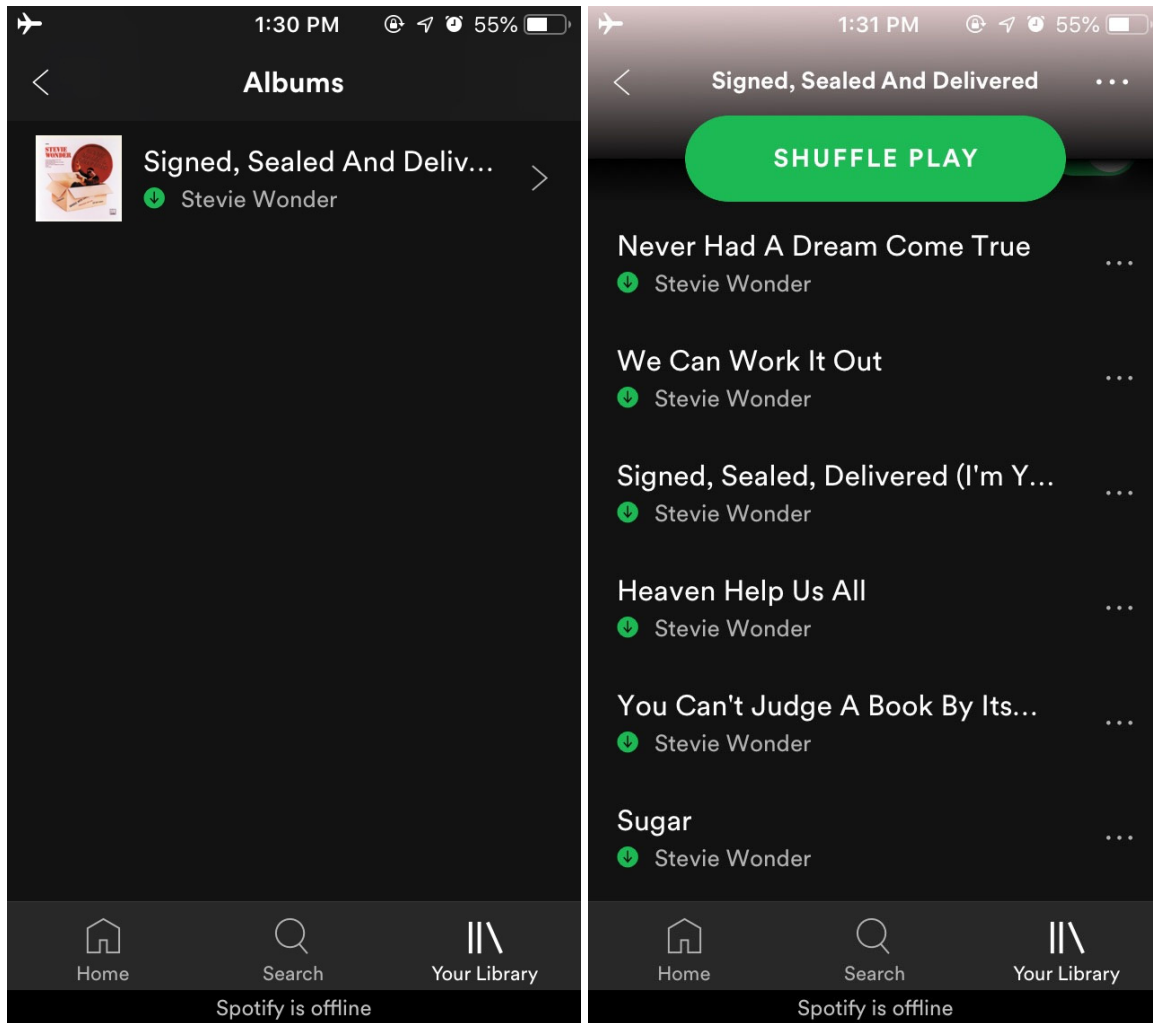


28. The Accused Instrumentalities contain a processor that retrieves selections and the associated category flags from the storage device based upon user selection of predetermined of the categories and a data decompressor that translates the compressed data into playable digital music data. For example, the Accused Instrumentalities permit a user to navigate between music files based upon selections of particular artists or types of music:





29. The Accused Instrumentalites contain a network interface for receiving the compressed data from a remote source over a network for download into the storage device. For example, each of the Accused Instrumentalities have the ability to receive music files over a network:



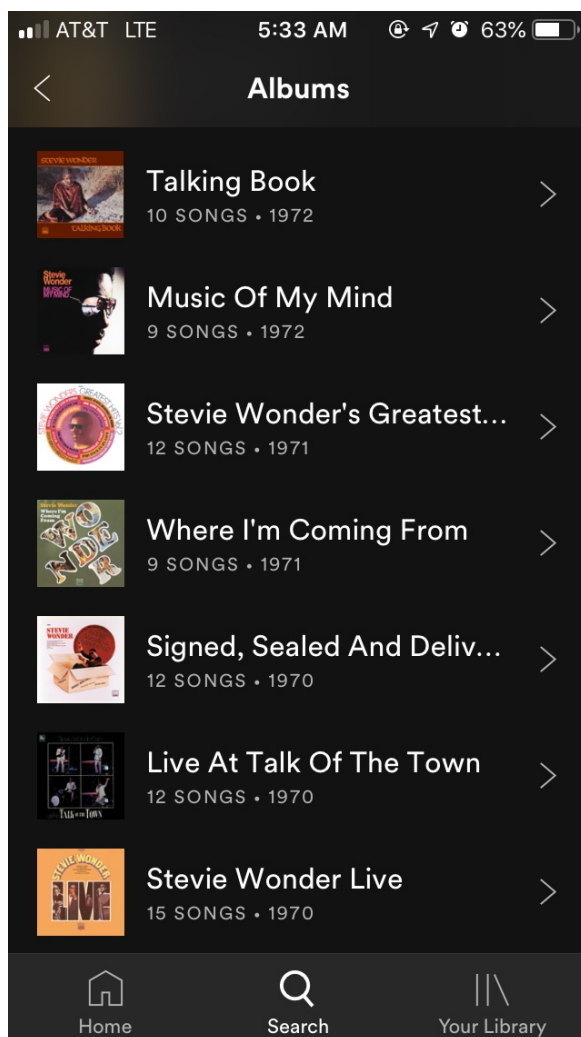
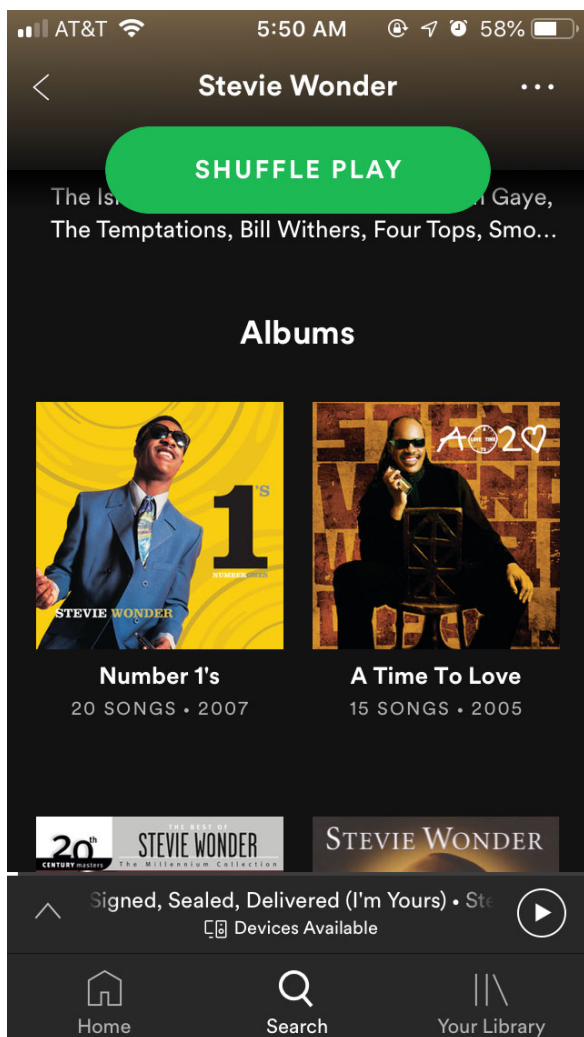
scope of this test.

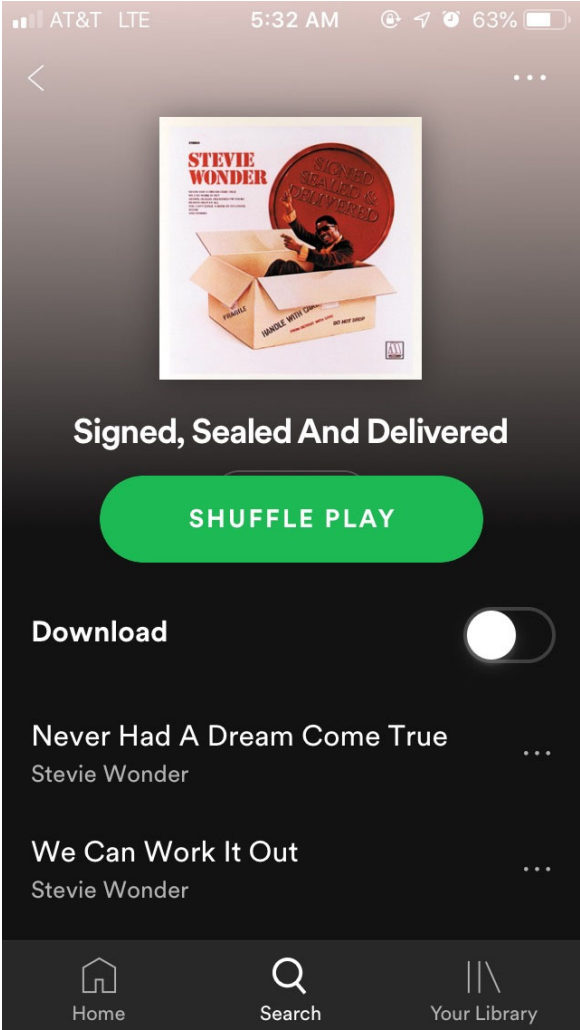
Bit rate and encoding formats

As with all digital media, these two music services use file compression to maximize bandwidth -- so you can stream and download music even over speed-challenged online connections, ideally without gaps or interruptions.

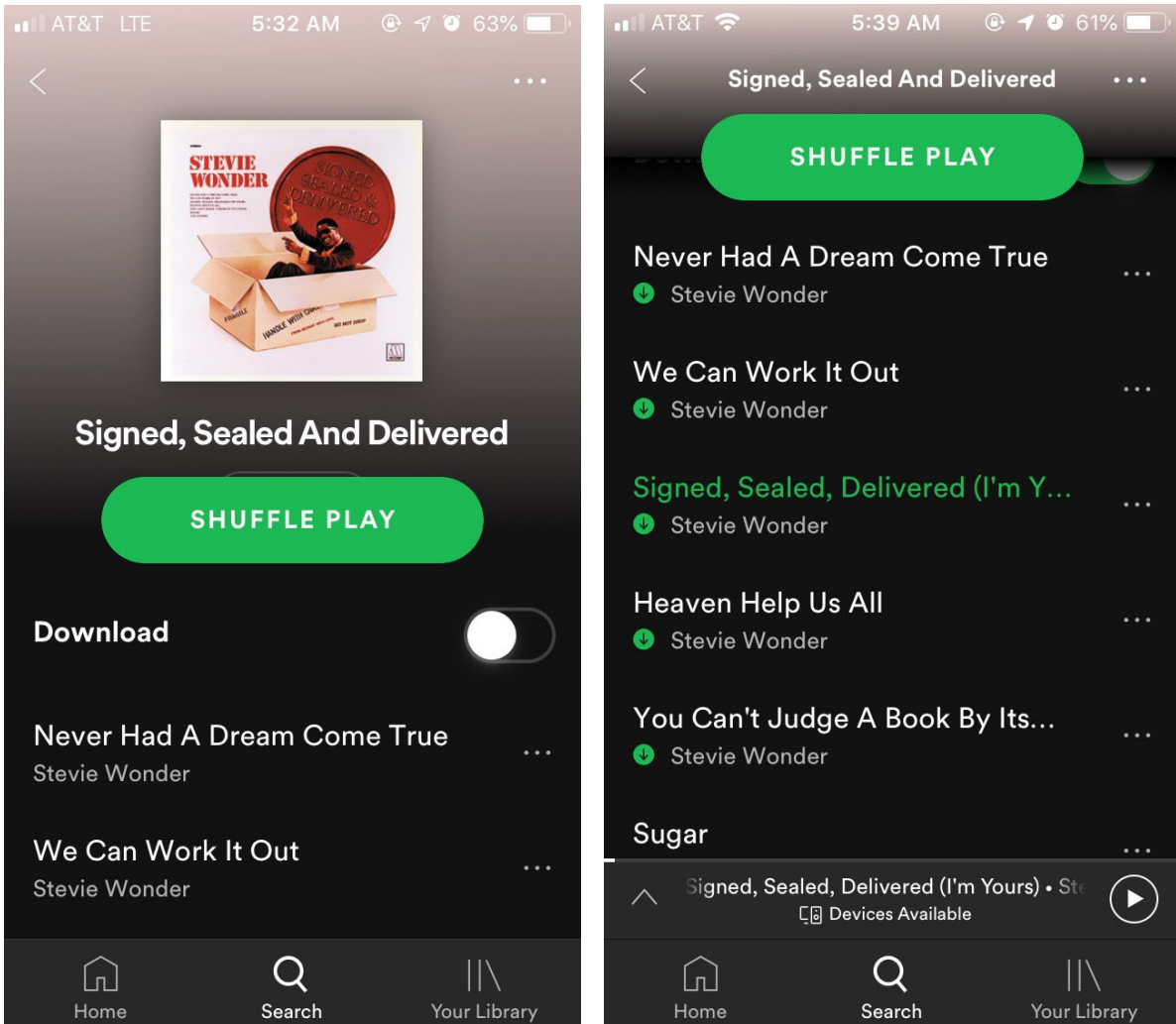
The two services use different encoding formats and a different bit rate. Apple Music is streamed at 256Kbps in AAC (**Advanced Audio Coding**) format, while Spotify offers the **Ogg Vorbis format at 320Kbps**. Right off the bat, the higher number might make Spotify look better, but in reality the two compression formats aren't directly comparable by bit rate alone.

30. The Accused Instrumentalities contain a graphical user interface display having a plurality of selectable screens, at least one of the selectable screens including a plurality of category buttons constructed and arranged so that when a predetermined of the category buttons is activated, music selections having category flags matching the predetermined category of a respective of the buttons are selected and listed on the display:





31. The Accused Instrumentalities contain category flags wherein one of the category flags comprises an ownership category flag that indicates which music selections from the list of all music selections are currently resident in the storage device:



32. Other information from Spotify further demonstrates that the Accused Instrumentalities infringe at least claim 1 of the '539 Patent. (See, e.g., <https://www.spotify.com/us/>; https://support.spotify.com/us/using_spotify/the_basics/what-is-spotify/; https://support.spotify.com/us/using_spotify/the_basics/webplayer/; https://support.spotify.com/us/account_payment_help/subscription_information/subscription-levels/; https://support.spotify.com/us/using_spotify/the_basics/search/ (and demonstrative video); https://support.spotify.com/us/using_spotify/the_basics/play-a-song/ (and expanded articles therein); https://support.spotify.com/us/using_spotify/the_basics/what-is-your-music/; https://support.spotify.com/us/using_spotify/features/what-is-your-music/;

https://support.spotify.com/us/using_spotify/the_basics/listen-offline/ (and demonstrative video); https://support.spotify.com/us/using_spotify/features/listen-offline/ (and demonstrative video); https://support.spotify.com/us/using_spotify/the_basics/listen-offline-troubleshooting/ (and expanded articles therein); https://support.spotify.com/us/using_spotify/the_basics/play-queue/ (and expanded articles therein); https://support.spotify.com/us/using_spotify/playlists/create-a-playlist/ (and demonstrative video); https://support.spotify.com/us/using_spotify/playlists/save-your-music-with-playlists/ (and expanded articles therein); https://support.spotify.com/us/using_spotify/features/sorting-and-filtering/ (and expanded articles therein); https://support.spotify.com/us/using_spotify/playlists/discover-weekly/; https://support.spotify.com/us/using_spotify/playlists/release-radar/ (and expanded articles therein); https://support.spotify.com/us/using_spotify/playlists/fresh-finds/; https://support.spotify.com/us/using_spotify/playlists/daily-mix/; https://support.spotify.com/us/using_spotify/system_settings/spotify-supported-devices/; https://support.spotify.com/us/using_spotify/system_settings/storage-and-data-information/; https://support.spotify.com/us/using_spotify/system_settings/bandwidth-and-data-usage/; https://support.spotify.com/us/using_spotify/discover_music/discover/; https://support.spotify.com/us/using_spotify/discover_music/browse/; https://support.spotify.com/us/using_spotify/discover_music/spotify-radio/ (and demonstrative video) (all references accessed March 6, 2018.)

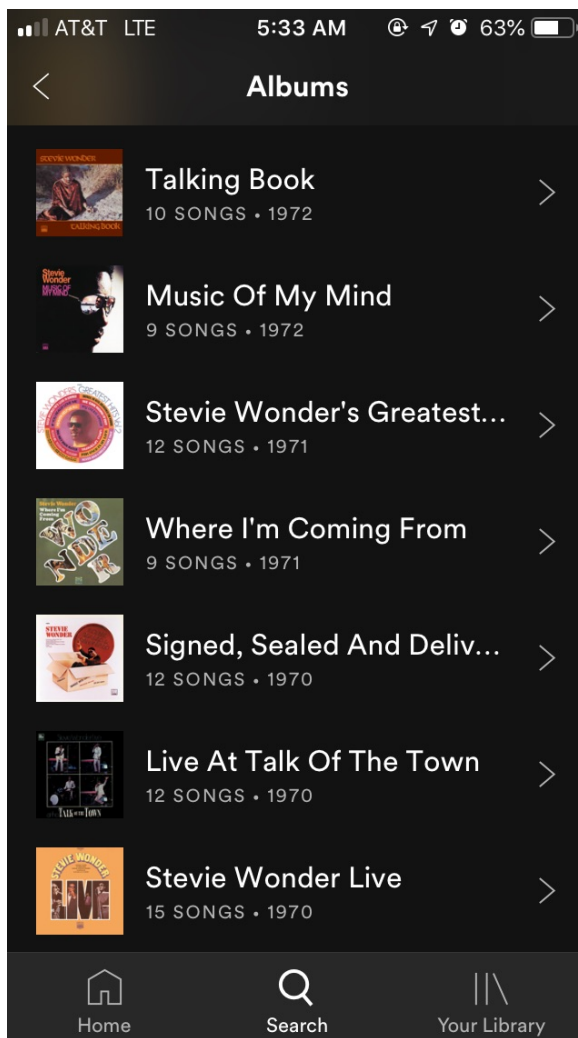
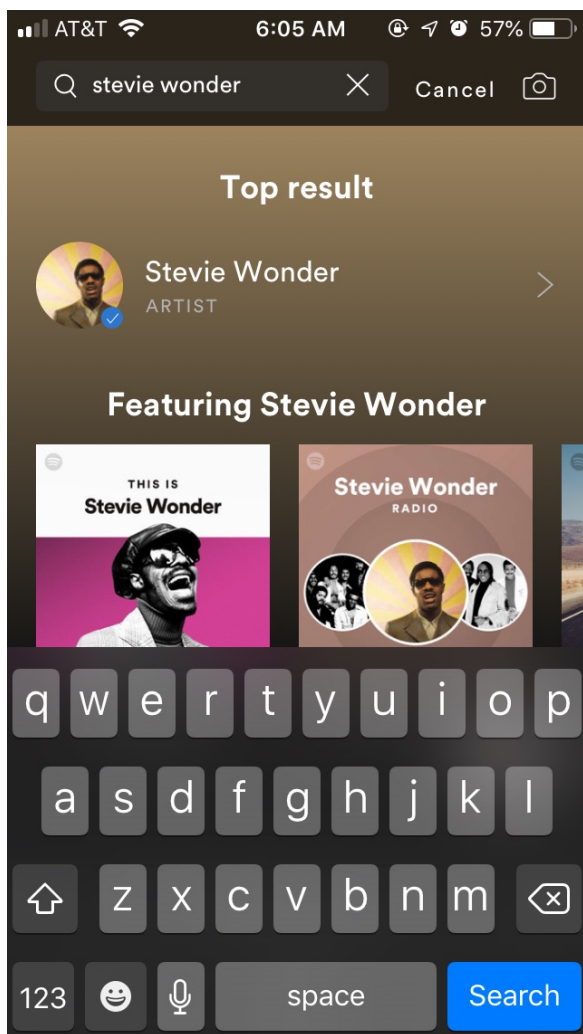
33. Claim 2 of the '539 Patent generally recites the system for claim 1, where the category flags are propagated from the service provider to the user-side storage device.

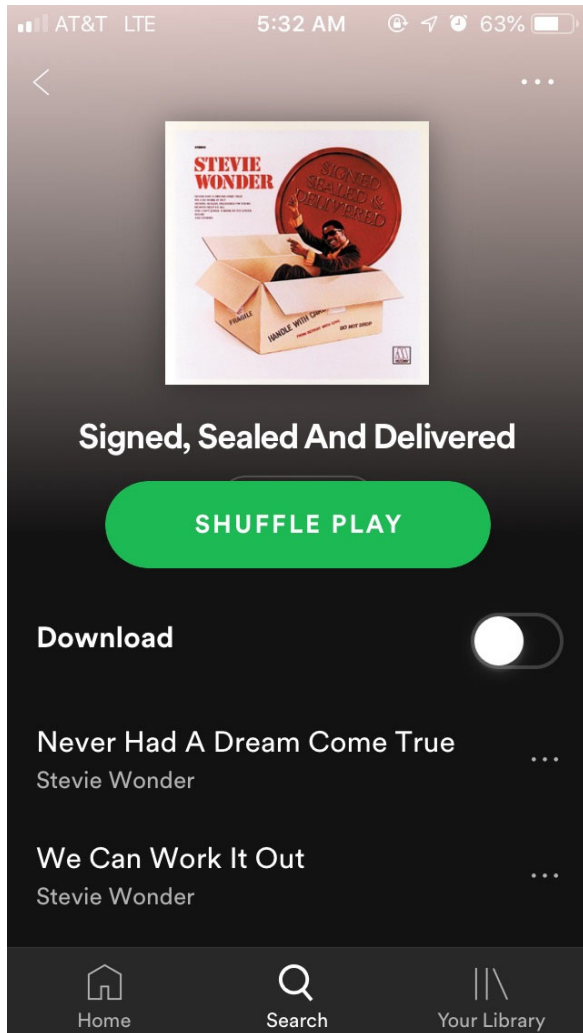
34. On information and belief, and as explained in ¶¶ 23-32 above, the Accused

Instrumentalities infringe at least claim 2 of the '539 Patent.

35. Claim 6 of the '539 Patent generally recites a display including a playlist of music selections chosen from a search list, constructed to translate the compressed data, in a predetermined order, into playable digital music media and then audible music signals.

36. On information and belief, the Accused Instrumentalities infringe at least claim 6 of the '539 Patent:





See also https://support.spotify.com/us/using_spotify/the_basics/what-is-spotify/;
https://support.spotify.com/us/using_spotify/the_basics/search/ (and demonstrative video);
https://support.spotify.com/us/using_spotify/the_basics/play-a-song/ (and expanded articles therein); https://support.spotify.com/us/using_spotify/the_basics/what-is-your-music/;
https://support.spotify.com/us/using_spotify/features/what-is-your-music/;
https://support.spotify.com/us/using_spotify/playlists/create-a-playlist/ (and demonstrative video); https://support.spotify.com/us/using_spotify/playlists/save-your-music-with-playlists/ (and expanded articles therein); https://support.spotify.com/us/using_spotify/features/sorting-

and-filtering/ (and expanded articles therein);

https://support.spotify.com/us/using_spotify/system_settings/spotify-supported-devices/;

https://support.spotify.com/us/using_spotify/system_settings/storage-and-data-information/;

https://support.spotify.com/us/using_spotify/system_settings/bandwidth-and-data-usage/;

https://support.spotify.com/us/using_spotify/the_basics/search/ (and demonstrative video);

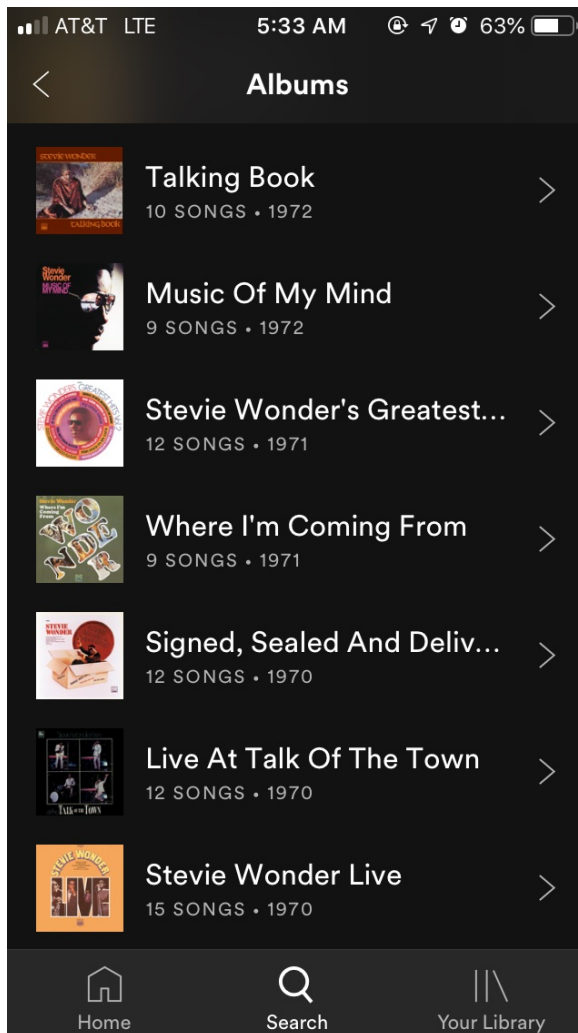
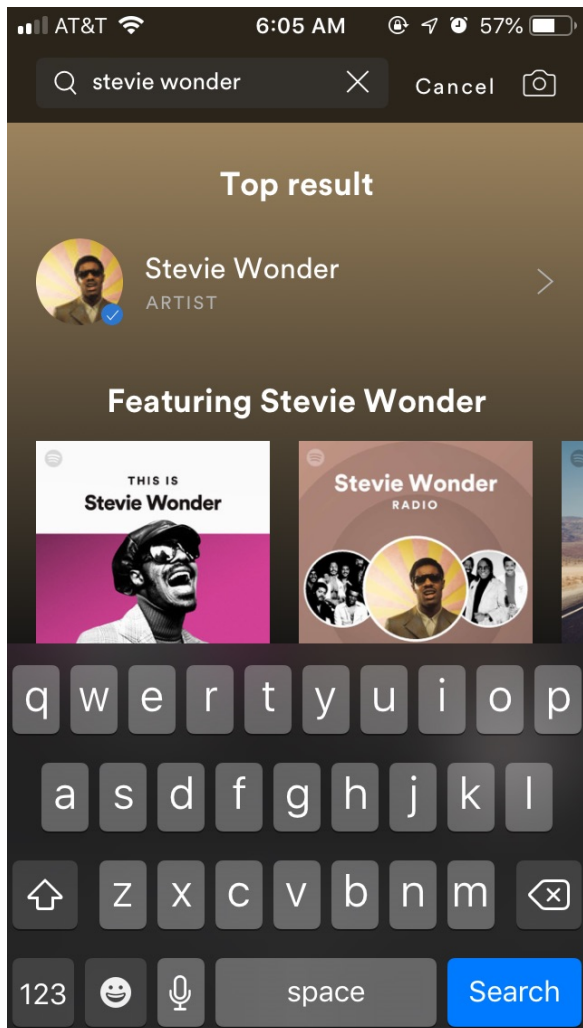
https://support.spotify.com/us/using_spotify/the_basics/play-a-song/ (and expanded articles therein).)

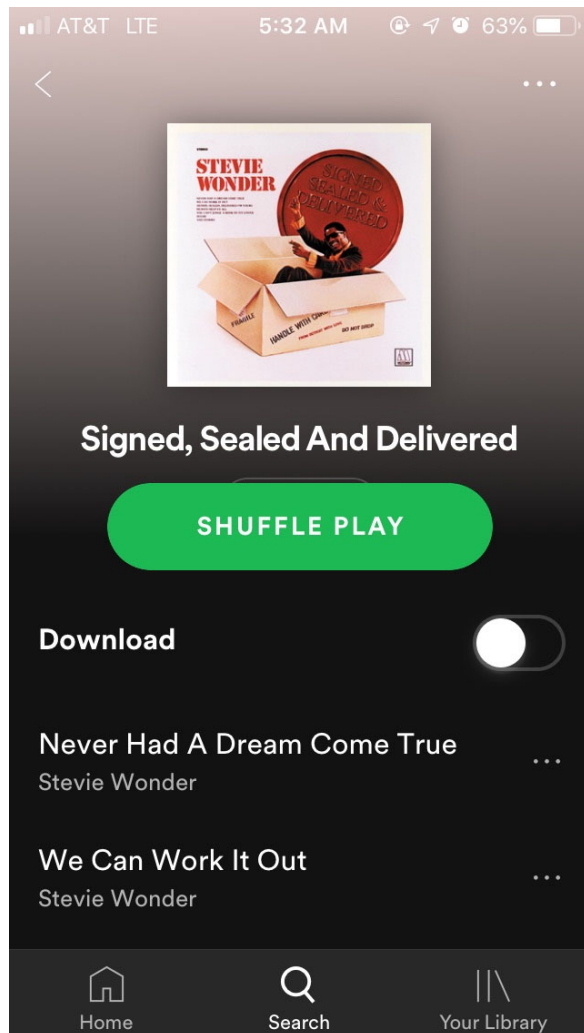
37. Claim 7 of the '539 Patent generally recites a memory function that memorizes predetermined lists of music selections for subsequent playback based on predetermined list identifies commands.

38. On information and belief, and as explained in ¶¶ 23-32, 35-36 above, the Accused Instrumentalities infringe at least claim 7 of the 539 Patent.

39. Claim 9 of the '539 Patent generally recites a display screen having a plurality of graphical user interface displays, including at least a plurality of buttons that, when activated, display a list of music selections on a search list having associated category flags.

40. On information and belief, the Accused Instrumentalities infringe at least claim 9 of the '539 Patent:





See also https://support.spotify.com/us/using_spotify/the_basics/what-is-your-music/;
https://support.spotify.com/us/using_spotify/features/what-is-your-music/;
https://support.spotify.com/us/using_spotify/playlists/create-a-playlist/ (and demonstrative video); https://support.spotify.com/us/using_spotify/playlists/save-your-music-with-playlists/ (and expanded articles therein); https://support.spotify.com/us/using_spotify/features/sorting-and-filtering/ (and expanded articles therein); https://support.spotify.com/us/using_spotify/the_basics/search/ (and demonstrative video); https://support.spotify.com/us/using_spotify/the_basics/play-queue/ (and expanded articles therein); https://support.spotify.com/us/using_spotify/playlists/discover-weekly/;

https://support.spotify.com/us/using_spotify/playlists/release-radar/ (and expanded articles therein); https://support.spotify.com/us/using_spotify/playlists/fresh-finds/; https://support.spotify.com/us/using_spotify/playlists/daily-mix/; https://support.spotify.com/us/using_spotify/discover_music/discover/.)

41. Claim 15 of the '539 Patent generally recites a computer readable medium that contains program instructions for: receiving compressed data representative of a plurality of musical selections from a source; storing the compressed data in a database with a plurality of category markers associated therewith representative of a plurality of predetermined characteristics of each of the musical selections, respectively; selectively accessing predetermined of the plurality of selections and constructing a list of the selections for playback as music based upon at least one of the predetermined characteristics entered by a user; decompressing and playing back each of the predetermined of the plurality of selections according to a desired order of playback; and displaying in a graphical user interface display having a plurality of selectable screens, at least one of the selectable screens including a plurality of category buttons constructed and arrayed so that when a predetermined of the category buttons is activated, music selections having category flags matching the predetermined category of as respective of the buttons are selected and listed on the display; wherein at least one of the category flags is an ownership category flag that indicates which music selections from the list of music selections are currently resident in a storage device of the music organizer and entertainment center.

42. On information and belief, and as explained in ¶¶ 23-32 above, the Accused Instrumentalities infringe at least claim 15 of the '539 Patent.

43. Claim 16 of the '539 Patent specifies that the step of receiving in claim 15 includes downloading the compressed data from a network.

44. On information and belief, and as explained in ¶¶ 23-32 above, the Accused Instrumentalities infringe at least claim 16 of the '539 Patent. See <https://www.spotify.com/us/>; https://support.spotify.com/us/using_spotify/the_basics/what-is-spotify/; https://support.spotify.com/us/using_spotify/the_basics/webplayer/; https://support.spotify.com/us/account_payment_help/subscription_information/subscription-levels/; https://support.spotify.com/us/using_spotify/the_basics/what-is-your-music/; https://support.spotify.com/us/using_spotify/features/what-is-your-music/; https://support.spotify.com/us/using_spotify/the_basics/listen-offline/ (and demonstrative video); https://support.spotify.com/us/using_spotify/features/listen-offline/ (and demonstrative video); https://support.spotify.com/us/using_spotify/the_basics/listen-offline-troubleshooting/ (and expanded articles therein); https://support.spotify.com/us/using_spotify/system_settings/spotify-supported-devices/; https://support.spotify.com/us/using_spotify/system_settings/storage-and-data-information/; https://support.spotify.com/us/using_spotify/system_settings/bandwidth-and-data-usage/.)

45. Claims 19–21 of the '539 Patent generally recite the method for claim 15, comprising executing program instructions stored in the computer readable medium of claim 15, receiving category flags from the service provider and matching them to musical selections, and download the data from a network.

46. On information and belief, and as explained in ¶¶ 23-32 above, the Accused Instrumentalities infringe at least claims 19–21 of the '539 Patent.

47. Claim 24 of the '539 Patent generally recites the combination of the computer readable medium of claim 15, a network interface, a graphical user interface display, and a processor configured to execute the program instructions contained in the computer readable

medium.

48. On information and belief, and as explained in ¶¶ 23-32 above, the Accused Instrumentalities infringe at least claim 24 of the '539 Patent.

49. Defendant was made aware of the '539 Patent and its infringement thereof at least as early as October 19, 2016, when MOAEC informed Defendant of the '539 Patent.

50. Upon information and belief, since at least October 19, 2016, when Defendant received notice of the '539 Patent and its infringement thereof, Defendant has willfully infringed at least one claim of the '539 Patent.

51. Upon information and belief, since at least October 19, 2016, when Defendant received notice of the '539 Patent and its infringement thereof, Defendant has induced and continues to induce others to infringe at least one claim of the '539 Patent under 35 U.S.C. § 271(b) by, among other things, with specific intent or willful blindness, actively aiding and abetting others to infringe, including but not limited to Defendant's partners, clients, customers, and end users, whose use of the Accused Instrumentalities constitutes direct infringement of at least one claim of the '539 Patent.

52. In particular, Defendant's actions that aid and abet others such as its partners, customers, clients, and end users to infringe include using, advertising and distributing the Accused Instrumentalities and providing playlists, instruction materials, training, and services regarding the Accused Instrumentalities. On information and belief, Defendant has engaged in such actions with specific intent to cause infringement or with willful blindness to the resulting infringement since Defendant has had actual knowledge of the '539 Patent and knowledge that its acts were inducing infringement of the '539 Patent since at least the date Defendant received notice that such activities infringed the '539 Patent.

53. Upon information and belief, since at least October 19, 2016, when Defendant received notice of the '539 Patent and its infringement thereof, Defendant is liable as a contributory infringer of the '539 patent under 35 U.S.C. § 271(c) by offering to sell, selling and importing into the United States media content delivery in shared networks to be especially made or adapted for use in an infringement of the '539 patent, specifically by incentivizing app integrations with other corporations that then use the Accused Instrumentalities in an infringing manner. (*See, e.g.*, https://support.spotify.com/us/using_spotify/app_integrations/.) The Accused Instrumentalities are a material component for use in practicing the '539 patent and are specifically made and are not a staple article of commerce suitable for substantial non-infringing use.

54. Plaintiff has been harmed by Defendant's infringing activities.

PRAYER FOR RELIEF

55. WHEREFORE, Plaintiff asks this Court for judgment for itself and against Defendant, including:

- a. An adjudication that Defendant has infringed the '539 Patent pursuant to 35 U.S.C. § 271(a);
- b. An adjudication that Defendant has induced infringement of the '539 Patent pursuant to 35 U.S.C. § 271(b);
- c. An adjudication that Defendant has contributorily infringed the '539 Patent pursuant to 35 U.S.C. § 271(c);
- d. An award of damages to be paid by Defendant adequate to compensate Plaintiff for Defendant's past infringement of the '539 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;

e. A determination that Defendant's infringement of the '539 Patent is willful, and an increase in damages of up to three times the amount found or assessed under 35 U.S.C. § 284;

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

g. Such other and further relief at law or in equity as this Court should find just and proper.

JURY DEMAND

56. Plaintiffs hereby demand a jury as to all claims triable to a jury.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

Dated: February 13, 2019

Respectfully submitted,

FARNAN LLP

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