

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

<p>AVInnov LLC,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>Charter Communications, Inc.,</p> <p style="text-align: center;">Defendant.</p>	<p>Case No. _____</p> <p>Patent Case</p> <p>Jury Trial Demanded</p>
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COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff AVInnov LLC (“AVInnov”), through its attorneys, complains of Charter Communications, Inc. (“Charter”), and alleges the following:

PARTIES

1. Plaintiff AVInnov LLC is a corporation organized and existing under the laws of Delaware and maintains its principal place of business at 125 Half Mile Road, Suite 200, Red Bank, NJ 07701.

2. Defendant Charter Communications, Inc. is a corporation organized and existing under the laws of Delaware that maintains its principal place of business at 400 Atlantic Street, Stamford, CT 06901.

JURISDICTION

3. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

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

5. This Court has personal jurisdiction over Charter because it has engaged in systematic and continuous business activities in the District of Delaware and is incorporated in Delaware. As described below, Charter has committed acts of patent infringement giving rise to this action within this District.

VENUE

6. Venue is proper in this District under 28 U.S.C. § 1400(b) because Charter has committed acts of patent infringement in this District and is incorporated in the State of Delaware. In addition, AVInnov has suffered harm in this district.

PATENTS-IN-SUIT

7. AVInnov is the assignee of all right, title and interest in United States Patent Nos. 6,502,194 (the “’194 Patent”); 6,526,411 (the “’411 Patent”); 7,173,177 (the “’177 Patent”); and 6,721,489 (the “’489 Patent”) (collectively hereinafter “Patents-in-Suit”), including all rights to enforce and prosecute actions for infringement and to collect damages for all relevant times against infringers of the Patents-in-Suit. Accordingly, AVInnov possesses the exclusive right and standing to prosecute the present action for infringement of the Patents-in-Suit by Charter.

The ’194 Patent

8. The ’194 Patent is entitled “System for Playback of Network Audio Material on Demand,” and issued December 31, 2002. The application leading to the ’194 Patent was filed on April 16, 1999. A true and correct copy of the ’194 Patent is attached hereto as Exhibit A and incorporated herein by reference.

9. The ’194 Patent is valid and enforceable.

The '411 Patent

10. The '411 Patent is entitled "System and Method for Creating Dynamic Playlists," and issued February 25, 2003. The application leading to the '411 Patent was filed on November 15, 2000, which claims priority from provisional application number 60/166,039, filed on November 17, 1999; which claims priority from provisional application number 60/165,726, filed on November 15, 1999; which claims priority from provisional application number 60/165,727, filed on November 15, 1999. A true and correct copy of the '411 Patent is attached hereto as Exhibit B and incorporated herein by reference.

11. The '411 Patent is valid and enforceable.

The '177 Patent

12. The '177 Patent is entitled "User Interface for Simultaneous Management of Owned and Unowned Inventory," and issued February 6, 2007. The application leading to the '177 Patent was filed on October 29, 2003, which is a continuation of U.S. Patent Application No. 09/473,901, filed on December 28, 1999. A true and correct copy of the '177 Patent is attached hereto as Exhibit C and incorporated herein by reference.

13. The '177 Patent is valid and enforceable.

The '489 Patent

14. The '489 Patent is entitled "Play list manager," and issued April 13, 2004. The application leading to the '489 Patent was filed on March 8, 2000. A true and correct copy of the '489 Patent is attached hereto as Exhibit D and incorporated herein by reference.

15. The '489 Patent is valid and enforceable.

COUNT I: INFRINGEMENT OF THE '194 PATENT

16. AVInnov incorporates the above paragraphs herein by reference.

17. **Direct Infringement.** Charter has been and continues to directly infringe one or more claims of the '194 Patent in at least this District by making, using, offering to sell, selling and/or importing, without limitation, at least Charter Communications Cable Boxes (“Exemplary Charter Products”) that infringe at least exemplary claims 1, 2, 4, and 19 of the '194 Patent (the “Exemplary '194 Patent Claims”) literally or by the doctrine of equivalence. On information and belief, numerous other devices that infringe the claims of the Patents-in-Suit have been made, used, sold, imported, and offered for sale by Charter and/or its customers.

18. **Induced Infringement.** Charter actively, knowingly, and intentionally has been and continues to induce infringement of the '194 Patent, literally or by the doctrine of equivalence, by selling Exemplary Charter Products to their customers for use in end-user products in a manner that infringes one or more claims of the '194 Patent.

19. **Contributory Infringement.** Charter actively, knowingly, and intentionally has been and continues materially contribute to their own customers' infringement of the '194 Patent, literally or by the doctrine of equivalence, by selling Exemplary Charter Products to their customers for use in end-user products in a manner that infringes one or more claims of the '194 Patent.

20. Prior to the filing of this complaint, Charter had actual knowledge of the '194 Patent and that its Exemplary Charter Products and the products incorporating them are imported into, sold, offered for sale, and used in the United States. *See* Exhibit E, Letter to Charter dated February 8, 2019; *see also* Exhibit F, Proof of Letter Delivery.

21. In addition to actual knowledge of the '194 Patent, prior to the filing of this complaint, Charter also had knowledge that the Exemplary Charter Products, and the use by consumers of those products, in the customary and intended manner, is likely to infringe the '194

Patent. *See* Exhibit E, Letter to Charter dated February 8, 2019; *see also* Exhibit F, Proof of Letter Delivery. Additionally, the filing of this Complaint also constitutes notice in accordance with 35 U.S.C. § 287.

22. Despite such notice, Charter continues to make, use, test, sell, offer for sale, market, and/or import into the United States, products that infringe the '194 Patent. On information and belief, Charter has also continued to sell the Exemplary Charter Products and distribute product literature and website materials inducing end users and others to use its products in the customary and intended manner that infringes the '194 Patent. Thus, on information and belief, Charter is contributing to and/or inducing the infringement of the '194 Patent.

23. Exhibit G includes charts comparing the Exemplary '194 Patent Claims to the Charter Communications Cable Box. As set forth in these charts, this Exemplary Charter Product practices the technology claimed by the '194 Patent. Accordingly, the Exemplary Charter Products incorporated in these charts satisfy all elements of the Exemplary '194 Patent Claims.

24. AVInnov therefore incorporates by reference in its allegations herein the claim charts of Exhibit G.

25. AVInnov is entitled to recover damages adequate to compensate for Charter's infringement.

COUNT II: INFRINGEMENT OF THE '411 PATENT

26. AVInnov incorporates the above paragraphs herein by reference.

27. **Direct Infringement.** Charter has been and continues to directly infringe one or more claims of the '411 Patent in at least this District by making, using, offering to sell, selling

and/or importing, without limitation, at least Charter Communications Cable Boxes (“Exemplary Charter Products”) that infringe at least exemplary claims 1, 3-9, 11-12, 14-17 of the ’411 Patent (the “Exemplary ’411 Patent Claims”) literally or by the doctrine of equivalence. On information and belief, numerous other devices that infringe the claims of the Patents-in-Suit have been made, used, sold, imported, and offered for sale by Charter and/or its customers.

28. **Induced Infringement.** Charter actively, knowingly, and intentionally has been and continues to induce infringement of the ’411 Patent, literally or by the doctrine of equivalence, by selling Exemplary Charter Products to their customers for use in end-user products in a manner that infringes one or more claims of the ’411 Patent.

29. **Contributory Infringement.** Charter actively, knowingly, and intentionally has been and continues materially contribute to their own customers’ infringement of the ’411 Patent, literally or by the doctrine of equivalence, by selling Exemplary Charter Products to their customers for use in end-user products in a manner that infringes one or more claims of the ’411 Patent.

30. Prior to the filing of this complaint, Charter had actual knowledge of the ’411 Patent and that its Exemplary Charter Products and the products incorporating them are imported into, sold, offered for sale, and used in the United States. *See* Exhibit E, Letter to Charter dated February 8, 2019; *see also* Exhibit F, Proof of Letter Delivery.

31. In addition to actual knowledge of the ’411 Patent, prior to the filing of this complaint, Charter also had knowledge that the Exemplary Charter Products, and the use by consumers of those products, in the customary and intended manner, is likely to infringe the ’411 Patent. *See* Exhibit E, Letter to Charter dated February 8, 2019; *see also* Exhibit F, Proof of

Letter Delivery. Additionally, the filing of this Complaint also constitutes notice in accordance with 35 U.S.C. § 287.

32. Despite such notice, Charter continues to make, use, test, sell, offer for sale, market, and/or import into the United States, products that infringe the '411 Patent. On information and belief, Charter has also continued to sell the Exemplary Charter Products and distribute product literature and website materials inducing end users and others to use its products in the customary and intended manner that infringes the '411 Patent. Thus, on information and belief, Charter is contributing to and/or inducing the infringement of the '411 Patent.

33. Exhibit H includes charts comparing the Exemplary '411 Patent Claims to the Charter Communications Cable Box. As set forth in these charts, this Exemplary Charter Product practices the technology claimed by the '411 Patent. Accordingly, the Exemplary Charter Products incorporated in these charts satisfy all elements of the Exemplary '411 Patent Claims.

34. AVInnov therefore incorporates by reference in its allegations herein the claim charts of Exhibit H.

35. AVInnov is entitled to recover damages adequate to compensate for Charter's infringement.

COUNT III: INFRINGEMENT OF THE '177 PATENT

36. AVInnov incorporates the above paragraphs herein by reference.

37. **Direct Infringement.** Charter has been and continues to directly infringe one or more claims of the '177 Patent in at least this District by making, using, offering to sell, selling and/or importing, without limitation, at least Charter Communications Cable Boxes ("Exemplary

Charter Products”) that infringe at least exemplary claims 1-3, 16 of the ’177 Patent (the “Exemplary ’177 Patent Claims”) literally or by the doctrine of equivalence. On information and belief, numerous other devices that infringe the claims of the Patents-in-Suit have been made, used, sold, imported, and offered for sale by Charter and/or its customers.

38. **Induced Infringement.** Charter actively, knowingly, and intentionally has been and continues to induce infringement of the ’177 Patent, literally or by the doctrine of equivalence, by selling Exemplary Charter Products to their customers for use in end-user products in a manner that infringes one or more claims of the ’177 Patent.

39. **Contributory Infringement.** Charter actively, knowingly, and intentionally has been and continues materially contribute to their own customers’ infringement of the ’177 Patent, literally or by the doctrine of equivalence, by selling Exemplary Charter Products to their customers for use in end-user products in a manner that infringes one or more claims of the ’177 Patent.

40. Prior to the filing of this complaint, Charter had actual knowledge of the ’177 Patent and that its Exemplary Charter Products and the products incorporating them are imported into, sold, offered for sale, and used in the United States. *See* Exhibit E, Letter to Charter dated February 8, 2019; *see also* Exhibit F, Proof of Letter Delivery.

41. In addition to actual knowledge of the ’177 Patent, prior to the filing of this complaint, Charter also had knowledge that the Exemplary Charter Products, and the use by consumers of those products, in the customary and intended manner, is likely to infringe the ’177 Patent. *See* Exhibit E, Letter to Charter dated February 8, 2019; *see also* Exhibit F, Proof of Letter Delivery. Additionally, the filing of this Complaint also constitutes notice in accordance with 35 U.S.C. § 287.

42. Despite such notice, Charter continues to make, use, test, sell, offer for sale, market, and/or import into the United States, products that infringe the '177 Patent. On information and belief, Charter has also continued to sell the Exemplary Charter Products and distribute product literature and website materials inducing end users and others to use its products in the customary and intended manner that infringes the '177 Patent. Thus, on information and belief, Charter is contributing to and/or inducing the infringement of the '177 Patent.

43. Exhibit I includes charts comparing the Exemplary '177 Patent Claims to the Charter Communications Cable Box. As set forth in these charts, this Exemplary Charter Product practices the technology claimed by the '177 Patent. Accordingly, the Exemplary Charter Products incorporated in these charts satisfy all elements of the Exemplary '177 Patent Claims.

44. AVInnov therefore incorporates by reference in its allegations herein the claim charts of Exhibit I.

45. AVInnov is entitled to recover damages adequate to compensate for Charter's infringement.

COUNT IV: INFRINGEMENT OF THE '489 PATENT

46. AVInnov incorporates the above paragraphs herein by reference.

47. **Direct Infringement.** Charter has been and continues to directly infringe one or more claims of the '489 Patent in at least this District by making, using, offering to sell, selling and/or importing, without limitation, at least Charter Communications Cable Boxes ("Exemplary Charter Products") that infringe at least exemplary claims 1-6, 9-12 of the '489 Patent (the "Exemplary '489 Patent Claims") literally or by the doctrine of equivalence. On information and

belief, numerous other devices that infringe the claims of the Patents-in-Suit have been made, used, sold, imported, and offered for sale by Charter and/or its customers.

48. **Induced Infringement.** Charter actively, knowingly, and intentionally has been and continues to induce infringement of the '489 Patent, literally or by the doctrine of equivalence, by selling Exemplary Charter Products to their customers for use in end-user products in a manner that infringes one or more claims of the '489 Patent.

49. **Contributory Infringement.** Charter actively, knowingly, and intentionally has been and continues materially contribute to their own customers' infringement of the '489 Patent, literally or by the doctrine of equivalence, by selling Exemplary Charter Products to their customers for use in end-user products in a manner that infringes one or more claims of the '489 Patent.

50. Prior to the filing of this complaint, Charter had actual knowledge of the '489 Patent and that its Exemplary Charter Products and the products incorporating them are imported into, sold, offered for sale, and used in the United States. *See* Exhibit E, Letter to Charter dated February 8, 2019; *see also* Exhibit F, Proof of Letter Delivery.

51. In addition to actual knowledge of the '489 Patent, prior to the filing of this complaint, Charter also had knowledge that the Exemplary Charter Products, and the use by consumers of those products, in the customary and intended manner, is likely to infringe the '489 Patent. *See* Exhibit E, Letter to Charter dated February 8, 2019; *see also* Exhibit F, Proof of Letter Delivery. Additionally, the filing of this Complaint also constitutes notice in accordance with 35 U.S.C. § 287.

52. Despite such notice, Charter continues to make, use, test, sell, offer for sale, market, and/or import into the United States, products that infringe the '489 Patent. On

information and belief, Charter has also continued to sell the Exemplary Charter Products and distribute product literature and website materials inducing end users and others to use its products in the customary and intended manner that infringes the '489 Patent. Thus, on information and belief, Charter is contributing to and/or inducing the infringement of the '489 Patent.

53. Exhibit J includes charts comparing the Exemplary '489 Patent Claims to the Charter Communications Cable Box. As set forth in these charts, this Exemplary Charter Product practices the technology claimed by the '489 Patent. Accordingly, the Exemplary Charter Products incorporated in these charts satisfy all elements of the Exemplary '489 Patent Claims.

54. AVInnov therefore incorporates by reference in its allegations herein the claim charts of Exhibit J.

55. AVInnov is entitled to recover damages adequate to compensate for Charter's infringement.

JURY DEMAND

56. Under Rule 38(b) of the Federal Rules of Civil Procedure, AVInnov respectfully requests a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, AVInnov respectfully requests the following relief:

- A. A judgment that the '194 Patent, the '411 Patent, the '177 Patent, and the '489 Patent are valid and enforceable;
- B. A judgment that Charter has infringed, contributorily infringed, and/or induced infringement of one or more claims of the '194 Patent;

- C. A judgment that Charter has infringed, contributorily infringed, and/or induced infringement of one or more claims of the '411 Patent;
- D. A judgment that Charter has infringed, contributorily infringed, and/or induced infringement of one or more claims of the '177 Patent;
- E. A judgment that Charter has infringed, contributorily infringed, and/or induced infringement of one or more claims of the '489 Patent;
- F. An accounting of all damages not presented at trial;
- G. A judgment that awards AVInnov all appropriate damages under 35 U.S.C. § 284 for Charter's past infringement, and any continuing or future infringement of the Patents-in-Suit, up until the date such judgment is entered, including pre- or post-judgment interest, costs, and disbursements as justified under 35 U.S.C. § 284 and, if necessary, to adequately compensate AVInnov for Charter's infringement, an accounting:
 - i. that this case be declared exceptional within the meaning of 35 U.S.C. § 285 and that AVInnov be awarded its reasonable attorneys' fees against Charter that it incurs in prosecuting this action;
 - ii. that AVInnov be awarded costs, and expenses that it incurs in prosecuting this action; and
 - iii. that AVInnov be awarded such further relief at law or in equity as the Court deems just and proper.

Dated: February 22, 2019

Respectfully submitted,

DEVLIN LAW FIRM LLC

/s/ Timothy Devlin

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