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Data Scape Limited

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

DATA SCAPE LIMITED,
 	
               Plaintiff,
 	
   vs.
 	
SPOTIFY USA INC., and SPOTIFY TECHNOLOGY S.A.,
 	
              Defendants.
	Case No. 2:18-cv-10653-CBM-SK
	
	FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT
	
	JURY TRIAL DEMANDED
	
	Original Complaint Filed:
	December 26, 2019

This is an action for patent infringement arising under the Patent Laws of the United States of America, 35 U.S.C. § 1 *et seq.* in which plaintiff Data Scape Limited ("Plaintiff," "Data Scape") makes the following allegations against defendants Spotify USA Inc. and Spotify Technology S.A. ("Defendants" or "Spotify"):

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PARTIES

1. Data Scape is a company organized under the laws of Ireland with its office located at Office 115, 4-5 Burton Hall Road, Sandyford, Dublin 18, Ireland.

2. On information and belief, Defendant Spotify USA Inc. is a Delaware corporation with a principal place of business at 45 W. 18th Street, 7th Floor, New York, NY 1001. Spotify Technology S.A. is a company organized under the laws of the Grand Duchy of Luxembourg, with its principal place of business at 42-44, Avenue de la Gare, L-1610 Luxembourg. Spotify USA Inc. is a subsidiary of Spotify Technology S.A. Spotify can be served with process through its registered agent, National Registered Agents, Inc., 160 Greentree Dr. Ste. 101, Dover, DE 19904.

JURISDICTION AND VENUE

3. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has original subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. This Court has personal jurisdiction over Spotify in this action because Spotify has committed acts within the Central District of California giving rise to this action and has established minimum contacts with this forum such that the exercise of jurisdiction over Spotify would not offend traditional notions of fair play and substantial justice. Spotify, directly and through subsidiaries or intermediaries, has committed and continues to commit acts of infringement in this District by, among other things, offering to sell and selling products and/or services that infringe the asserted patents.

5. Venue is proper in this district under 28 U.S.C. § 1400(b). Spotify is registered to do business in California, and upon information and belief, Spotify has transacted business in the Central District of California and has committed acts of direct and indirect infringement in the Central District of California. Spotify has a regular and established place of business in this District. For example, Spotify has a regional headquarters at 9200 Sunset Blvd., West Hollywood, CA 90069, where it employs product marketing personnel.

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COUNT I

INFRINGEMENT OF U.S. PATENT NO. 7,720,929

6.   Plaintiff realleges and incorporates by reference the foregoing paragraphs, as if fully set forth herein.

7.   Data Scape is the owner by assignment of United States Patent No. 7,720,929 ("the '929 Patent"), entitled "Communication System And Its Method and Communication Apparatus And Its Method." The '929 Patent was duly and legally issued by the United States Patent and Trademark Office on May 18, 2010. A true and correct copy of the '929 Patent is included as Exhibit A.

8.   In their most basic form, and ignoring many claim limitations, the claims of the '929 Patent are directed to a data synchronization system with a controller configured to selectively transmit certain digital data between first and second storage media based on a comparison of edited data management information stored in the storage medium. The claims are not directed to abstract ideas. The claims provide technical solutions to technical problems, and, thus, are patent-eligible.

9.   As the '929 Patent states, the inventor, the inventor, Akihiro Morohashi, working at Sony Corporation, aimed to solve the problems skilled artisans in 1999 faced trying to selectively transfer digital data between two electronic apparatuses. *E.g.*, '929 Patent, Col 2:1-39. For example, many used optical disks to accomplish this process, but that was "cumbersome" and did not enable easy or random selection of files to transfer. *Id.* at 10-29. And when others burned digital files into hard disk drives or semiconductor memory, those systems still required a large amount of time to selectively transfer certain digital data between electronic apparatuses. *Id.* And in any case, there was no reasonable way to selectively synchronize select digital content data between the apparatuses. Id. These problems were specific to the technological process of selective digital-data transfer between electronic apparatuses. *Id.* at 1:27-2:22. And with 28 columns of text and 13 figures, including Figure 2 below, the inventors taught
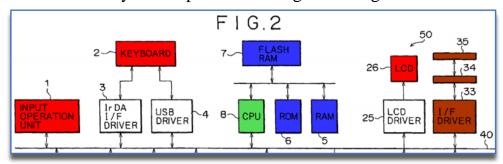
various technical solutions involving an unconventional server with a controller configured with circuitry to compare certain digital management information:

F I G. 2

10. Enabled by these teachings, the '929 patent recites in its claims various technical solutions to the existing technological problems and shortcomings. For example, various claims require the then-unconventional system of electronic components configured to use certain digital "management information" to compare, edit, delete and selectively transfer separate digital content data between two identified apparatuses. *See, e.g.,* '929 Patent, Claim 1 ("[a]storage [] configured to store management information … [b] a communicator … [c] a detector ...[d] an editor configured to select certain data [] and to edit said management information based on said selection, without regard to the connection… and [e] a controller configured to [i] transfer the selected data [] via said communicator based on said management information [ii] compare said management information…with management information [] in said first storage medium and [iii] to transmit data [] based on [the] comparison.").

11. The '929 patent and its file history make clear that each included independent-claim limitations were not in the prior art, let alone well-understood, routine, and conventional. This includes the claimed [a] storage configured to store management information, [b] communicator, [c] detector, [d] editor configured to select certain data and to edit said management information based on said selection, without regard to the connection, and [e] controller configured to [i] transfer the selected data via said communicator based on said management information, [ii] compare said management information with management information in said first storage

medium, and [iii] to transmit data based on the comparison. And the dependent claims also include limitations that were not in the prior art, let alone well-understood, routine, and conventional. *See, e.g.,* limitations of claims 2-9 of the '929 patent.

12.   Defendants have offered for sale, sold and/or imported into the United States products and services that infringe the '929 patent, and continues to do so. By way of illustrative example, these infringing products and services include, without limitation, Defendants' products and services, *e.g.*, the Spotify music streaming platform, and all versions and variations thereof since the issuance of the '929 Patent ("Accused Instrumentalities").

13.   Defendants have directly infringed and continues to infringe the '929 Patent, for example, by making, selling, offering for sale, and/or importing the Accused Instrumentalities, and through their own use and testing of the Accused Instrumentalities. Defendants use the Accused Instrumentalities for their own internal non-testing business purposes, while testing the Accused Instrumentalities, and while providing technical support and repair services for the Accused Instrumentalities to Defendants' customers.

14.   For example, the Accused Instrumentalities, including Spotify Premium, infringe Claim 1 of the '929 Patent. One non-limiting example of the Accused Instrumentalities' infringement is presented below.

15.   The Accused Instrumentalities include "[a] communication system including a first apparatus having a first storage medium, and a second apparatus." For example, the Accused Instrumentalities communicate music files and playlists stored on one device (e.g., a desktop computer with the Spotify app installed, or Access Point, Production Storage, User and Playlist) to another device (e.g., a user's mobile device or tablet with the Spotify app installed). *See, e.g.*, "Local Files," *available at* https://support.spotify.com/us/using_spotify/features/listen-to-local-files/ ("[Y]ou can also use your Spotify app to play music files stored on your computer (which we call "local files).").
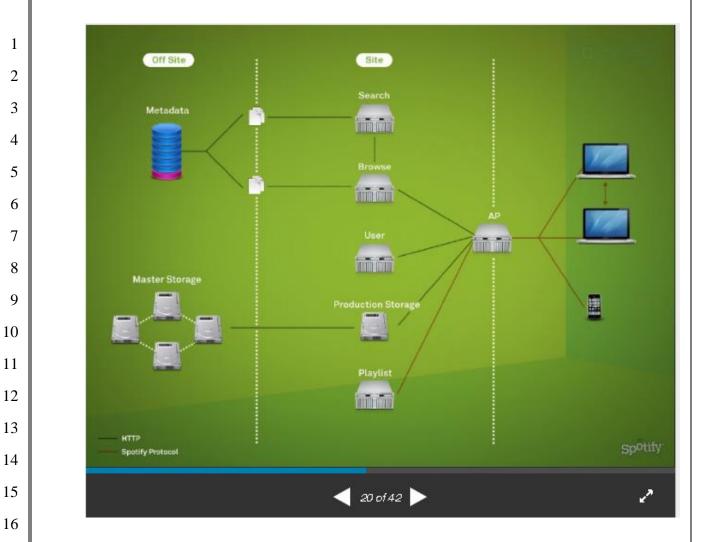
https://www.slideshare.net/ricardovice/spotify-behind-the-scenes

16.   The Accused Instrumentalities include a second apparatus comprising: "a second storage medium configured to store management information of data to be transferred to said first storage medium." For example, the desktop computer, mobile devices, and server components include a storage medium, e.g. a hard drive. The second storage medium is configured to store management information of data to be transferred.   *See,   e.g.,*   "Local   Files,"   *available   at* https://support.spotify.com/us/using_spotify/features/listen-to-local-files/   ("Import your local files to Spotify using the desktop app…[a]dd the files to a playlist.") ("In addition to over 35 million tracks we offer, you can also use your Spotify app to play music files stored on your computer (which we call "local files").").

1   17.   The Accused Instrumentalities further include a second apparatus

2   comprising "a communicator configured to communicate with said first apparatus." For

3   example, the desktop computer with the Spotify app installed (as well as Access Point,

4   Production Storage, User and Playlist) includes a communicator configured to

5   communicate with the mobile device or tablet. *See, e.g.*, "Local Files" ("Log in on your

6   mobile or tablet using the same WiFi network as your desktop app.").

7   18.   The Accused Instrumentalities further include a second apparatus

8   comprising "a detector configured to detect whether said first apparatus and a second

9   apparatus are connected." For example, the desktop computer with the Spotify app

10   installed (as well as Access Point, Production Storage, User and Playlist) includes a

11   detector that determines whether the mobile device is connected to the Internet using

12   the same WiFi network as the desktop application. *See, e.g.*, "Local Files" ("Log in on

13   your mobile or tablet using the same WiFi network as your desktop app.") "Spotify

14   Connect"   *available*   *at*

15   https://support.spotify.com/us/listen_everywhere/in_the_car/spotify-connect/, ("Click

16   connect to a device in the bottom-right. Select the device you'd like to play on.").

17   19.   The Accused Instrumentalities further include a second apparatus

18   comprising "an editor configured to select certain data to be transferred and to edit said

19   management information based on said selection without regard to the connection of

20   said first apparatus." For example, the desktop computer with the Spotify app installed

21   (as well as Access Point, Production Storage, User and Playlist) allows a user to select

22   the uploaded files and add the files to a playlist without regard to whether the mobile

23   device or tablet is connected to the web server. *See, e.g.*, "Local Files" ("2. Add the files

24   to a playlist. 3. Log in on your mobile or tablet using the same WiFi network as your

25   desktop app.").

26   20.   The Accused Instrumentalities further include a second apparatus

27   comprising "a controller configured to control transfer of the selected data stored in said

28   second apparatus to said first apparatus via said communicator based on said

management information edited by said editor when said detector detects that said first apparatus and said second apparatus are connected." For example, the desktop computer with the Spotify app installed (as well as Access Point, Production Storage, User and Playlist) will allow the local files to be transferred to the mobile device or tablet if the mobile device or tablet is connected to the same WiFi network as the desktop. *See, e.g.*, "Local Files" ("2. Add the files to a playlist. 3. Log in on your mobile or tablet using the same WiFi network as your desktop app. 4. Select the playlist containing the local files. 5. Switch on download.").

21.   The Accused Instrumentalities further include a second apparatus "wherein said controller is configured to compare said management information edited by said editor with management information of data stored in said first storage medium and to transmit data in said second apparatus based on result of the comparison." For example, before providing the mobile device or tablet the option to select the playlist containing the local files, the desktop computer with the Spotify app installed (as well as Access Point, Production Storage, User and Playlist) compares the playlist with the added local files with the corresponding playlist on the mobile device or tablet, and determines which songs on the playlist stored on the desktop computer are local files not yet stored on the mobile device or tablet. The desktop computer with the Spotify app installed then makes the local files available for download onto the mobile device or tablet. *See, e.g.*, "Local Files" ("2. Add the files to a playlist. 3. Log in on your mobile or tablet using the same WiFi network as your desktop app. 4. Select the playlist containing the local files. 5. Switch on download.").

22.   Defendants have had knowledge of the '929 Patent and their infringement since at least the filing of the original Complaint in this action, or shortly thereafter, including by way of this lawsuit. By the time of trial, Defendants will have known and intended (since receiving such notice) that their continued actions would actively induce and contribute to the infringement of the claims of the '929 Patent.

23.   Defendants' affirmative acts of making, using, selling, offering for sale, and/or importing the Accused Instrumentalities have induced and continue to induce users of the Accused Instrumentalities to use the Accused Instrumentalities in their normal and customary way to infringe the claims of the '929 Patent. Use of the Accused Instrumentalities in their ordinary and customary fashion results in infringement of the claims of the '929 Patent.

24.   For example, Defendants explain to customers the benefits of using the Accused Instrumentalities, such as by touting their advantages of allowing users to use the Spotify app to play music files stored on the users' desktop computer. Defendants also induce their customers to use the Accused Instrumentalities to infringe other claims of the '929 Patent. Defendants specifically intended and was aware that the normal and customary use of the Accused Instrumentalities on compatible systems would infringe the '929 Patent. Defendants performed the acts that constitute induced infringement, and would induce actual infringement, with the knowledge of the '929 Patent and with the knowledge, or willful blindness to the probability, that the induced acts would constitute infringement. On information and belief, Defendants engaged in such inducement to promote the sales of the Accused Instrumentalities, *e.g.,* through their user manuals, product support, marketing materials, demonstrations, installation support, and training materials to actively induce the users of the accused products to infringe the '929 Patent. Accordingly, Defendants have induced and continue to induce end users of the accused products to use the accused products in their ordinary and customary way with compatible systems to make and/or use systems infringing the '929 Patent, knowing that such use of the Accused Instrumentalities with compatible systems will result in infringement of the '929 Patent. Accordingly, Defendants have been (since at least as of filing of the original complaint), and currently are, inducing infringement of the '929 Patent, in violation of 35 U.S.C. § 271(b).

25.   Defendants have also infringed, and continues to infringe, claims of the '929 Patent by offering to commercially distribute, commercially distributing,

making, and/or importing the Accused Instrumentalities, which are used in practicing the process, or using the systems, of the '929 Patent, and constitute a material part of the invention. Defendants know the components in the Accused Instrumentalities to be especially made or especially adapted for use in infringement of the '929 Patent, not a staple article, and not a commodity of commerce suitable for substantial noninfringing use. For example, the ordinary way of using the Accused Instrumentalities infringes the patent claims, and as such, is especially adapted for use in infringement. Accordingly, Defendants have been, and currently are, contributorily infringing the '929 Patent, in violation of 35 U.S.C. § 271(c).

26.   For similar reasons, Defendants also infringe the '929 Patent by supplying or causing to be supplied in or from the United States all or a substantial portion of the components of the Accused Instrumentalities, where such components are uncombined in whole or in part, in such manner as to actively induce the combination of such components outside of the United States in a manner that would infringe the '929 Patent if such combination occurred within the United States. For example, Defendants supply or cause to be supplied in or from the United States all or a substantial portion of the software (e.g., the Spotify app) components of the Accused Instrumentalities in such a manner as to actively induce the combination of such components (e.g., by instructing users to use multiple devices, each with the Spotify app installed, to share files stored on distinct devices) outside of the United States.

27.   Defendants also indirectly infringe the '929 Patent by supplying or causing to be supplied in or from the United States components of the Accused Instrumentalities that are especially made or especially adapted for use in infringing the '929 Patent and are not a staple article or commodity of commerce suitable for substantial non-infringing use, and where such components are uncombined in whole or in part, knowing that such components are so made or adapted and intending that such components are combined outside of the United States in a manner that would infringe the '929 Patent if such combination occurred within the United States. Because the

Accused Instrumentalities are designed to operate as the claimed system and apparatus, the Accused Instrumentalities have no substantial non-infringing uses, and any other uses would be unusual, far-fetched, illusory, impractical, occasional, aberrant, or experimental. For example, Defendants supply or cause to be supplied in or from the United States all or a substantial portion of the software (e.g., the Spotify Premium app) components that are especially made or especially adapted for use in the Accused Instrumentalities, where such hardware and software components are not staple articles or commodities of commerce suitable for substantial noninfringing use, knowing that such components are so made or adapted and intending that such components are combined outside of the United States, as evidenced by Defendants' own actions or instructions to users in, e.g., combining multiple devices with the Spotify app installed, into infringing systems, and enabling and configuring the infringing functionalities of the Accused Instrumentalities.
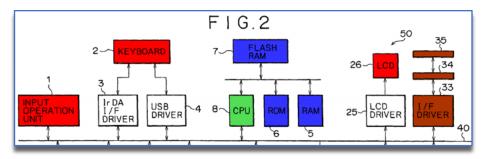
28.   As a result of Defendants' infringement of the '929 Patent, Plaintiff Data Scape is entitled to monetary damages in an amount adequate to compensate for Defendants' infringement, but in no event less than a reasonable royalty for the use made of the invention by Defendants, together with interest and costs as fixed by the Court.

COUNT II

INFRINGEMENT OF U.S. PATENT NO. 7,617,537

29.   Plaintiff realleges and incorporates by reference the foregoing paragraphs, as if fully set forth herein.

30.   Data Scape is the owner by assignment of United States Patent No. 7,617,537 ("the '537 Patent"), entitled "Communication System And Its Method and Communication Apparatus And Its Method." The '537 Patent was duly and legally issued by the United States Patent and Trademark Office on May 18, 2010. A true and correct copy of the ' 537 Patent is included as Exhibit B.

31.   In their most basic form, and ignoring many claim limitations, the claims of the '537 Patent are directed to a data synchronization system configured to compare identifiers in first and second apparatuses and thereby selectively delete and transfer certain digital content data across the two apparatuses. The claims are not directed to abstract ideas. The claims provide technical solutions to technical problems, and, thus, are patent-eligible.

32.   As the '537 Patent states, the inventor, Akihiro Morohashi, working at Sony Corporation, aimed to solve the problems skilled artisans in 1999 faced trying to selectively transfer data between two electronic apparatuses. *E.g.,* '537 Patent, Col 2:1-39. For example, many used optical disks to accomplish this process, but that was "cumbersome" and did not enable easy or random selection of files to transfer. *Id.* at 2:10-29. And when others burned digital files into hard disk drives or semiconductor memory, those systems still required a large amount of time to selectively transfer certain digital data between electronic apparatuses. *Id.* And in any case, there was no reasonable way to selectively synchronize select digital content data between the apparatuses. *Id.* These problems were specific to the technological process of selective digital-data transfer between electronic apparatuses. *Id.* at 1:27-2:22. And with 28 columns of text and 13 figures, including Figure 2 below, the inventor taught various technical solutions involving an unconventional server with a controller configured with circuitry to compare certain digital management information:

FIG.2

33.   Enabled by these teachings, the patents recite in their claims various technical solutions to the existing technological problems and shortcomings. For example, various claims require the then-unconventional system of electronic

1   components configured to use digital "identifiers" to compare, edit, delete and

2   selectively transfer separate digital content data between two apparatuses. *See,*

3   *e.g.,* '537 Patent, Claim 15 ("[a] communication apparatus configured to transfer

4   content data to a portable apparatus comprising … [b] a storing unit … [c] a processor

5   configured to …[i] judge whether said portable apparatus and said communication

6   apparatus are connected; [ii] compare . . . an identifier of said portable apparatus with

7   an identifier stored in said communication apparatus; [iii] compare . . . a first list of

8   content data of said portable apparatus and a second list of content data in said

9   communication apparatus; [iv] transfer content data, from the communication apparatus

10 to the portable apparatus, which is registered in said second list and not registered in

11 said first list; and [v] delete second content data, from the portable apparatus, which is

12 registered in said first list and is not registered in said second list.").

13   34.   The '537 patent and its file history make clear that each included

14 independent-claim limitations were not in the prior art, let alone well-understood,

15 routine, and conventional.   This includes the claimed communication apparatus

16 configured to (1) compare an identifier of a portable apparatus with an identifier stored

17 therein; (2) compare a first list of content data stored in the portable apparatus with a

18 second list of content data in the communication apparatus; (3) transfer content data

19 which is registered in the second list and not the first list; and (4) delete second content

20 data which is registered in the first list and not in the second list. And the dependent

21 claims also include limitations that were not in the prior art, let alone well-understood,

22 routine, and conventional. *See, e.g.,* limitations of claims 16, 17, 18, and 19 of the '537

23 patent.

24   35.   Defendants have offered for sale, sold and/or imported into the United

25 States products and services that infringe the '537 patent, and continues to do so. By

26 way of illustrative example, these infringing products and services include, without

27 limitation, Defendants' products and services, *e.g.*, the Spotify music streaming

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1 platform, and all versions and variations thereof since the issuance of the '537 Patent

2 ("Accused Instrumentalities").

3   36.   Defendants have directly infringed and continue to infringe the '537

4 Patent, for example, by making, selling, offering for sale, and/or importing the Accused

5 Instrumentalities, and through their own use and testing of the Accused

6 Instrumentalities. Defendants use the Accused Instrumentalities for their own internal

7 non-testing business purposes, while testing the Accused Instrumentalities, and while

8 providing technical support and repair services for the Accused Instrumentalities to

9 Defendants' customers.

10   37.   For example, the Accused Instrumentalities, including Spotify Premium,

11 infringe Claim 1 of the '537 Patent. One non-limiting example of the Accused

12 Instrumentalities' infringement is presented below.

13   38.   The Accused Instrumentalities perform a communication method to

14 transfer content data to a first apparatus from a second apparatus. For example, a mobile

15 device with the Spotify app (e.g. a first apparatus) can connect to a desktop computer

16 with the Spotify app (or to Access Point, Production Storage, User and Playlist), to

17 transfer files, e.g. music files, stored in the desktop computer to the mobile device (e.g.

18 a   second   apparatus).   *See, e.g.*,   "Local   Files",   *available   at*

19 https://support.spotify.com/us/using_spotify/features/listen-to-local-files/ ("[Y]ou can

20 also use your Spotify app to play music files stored on your computer (which we call

21 "local files).").

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https://www.slideshare.net/ricardovice/spotify-behind-the-scenes

39.   The Accused Instrumentalities perform a communication method to transfer content data from a first apparatus to a second apparatus further comprising judging whether said first apparatus and said second apparatus are connected. For example, the Spotify app on the desktop computer can only transfer music files between the desktop computer and the mobile device if it determines that the devices are connected on the same WiFi network. *See, e.g.*, "Local Files" ("Log in on your mobile or tablet using the same WiFi network as your desktop app.") ("Didn't work?...check the following:…your devices are connected to the same WiFi network.").

40.   The Accused Instrumentalities perform a communication method to transfer content data from a first apparatus to a second apparatus further comprising comparing, upon judging that said first apparatus and said second apparatus are

connected, an identifier of said first apparatus with an identifier stored in said second apparatus. For example, when the mobile device is connected to the desktop computer, the Spotify app on the desktop computer will display an identifier associated with the mobile device. *See, e.g.*, "Spotify Connect" ("Click connect to a device in the bottom-right. Select the device you'd like to play on."). https://support.spotify.com/us/listen_everywhere/in_the_car/spotify-connect/

41.   The Accused Instrumentalities perform a communication method to transfer content data from a first apparatus to a second apparatus further comprising comparing, when said identifier of said first apparatus corresponds to said identifier stored in second apparatus, a first list of content data of said first apparatus and a second list of content data of said second apparatus. For example, when the mobile device is connected to the desktop (or to Access Point, Production Storage, User and Playlist), the Spotify app will compare playlists of music present on the mobile device to playlists present on the desktop to determine which files to transfer to the mobile device. *See, e.g.*, "Local Files" ("2. Add the files to a playlist. 3. Log in on your mobile or tablet using the same WiFi network as your desktop app. 4. Select [on the mobile device] the playlist containing the local files.").

42.   The Accused Instrumentalities perform a communication method to transfer content data from a first apparatus to a second apparatus further comprising transferring, from the second apparatus to the first apparatus, first content data, which is registered in said second list and is not registered in said first list. For example, the Spotify app will transfer only songs found in the playlist of the desktop (or Access Point, Production Storage, User and Playlist) that are not found in the playlist of the mobile device. *See, e.g.*, "Local Files" ("2. Add the [local] files to a playlist. 3. Log in on your mobile or tablet using the same WiFi network as your desktop app. 4. Select [on the mobile device] the playlist containing the local files. 5. Switch on Download").

43.   The Accused Instrumentalities perform a communication method to transfer content data from a first apparatus to a second apparatus further comprising

1 deleting, from the first apparatus, second content data, which registered in said first list

2 and is not registered in the second list. For example, if a "local file" on the desktop is

3 deleted from the desktop (or Access Point, Production Storage, User and Playlist), that

4 local file is also deleted from any playlist on the desktop Spotify app that included the

5 deleted local file. Upon the next sync between the Spotify app on the desktop and the

6 Spotify app on mobile device, the local file is then deleted from the mobile device.

7   44.   Defendants have had knowledge of the '537 Patent and their infringement

8 since at least the filing of the original Complaint in this action, or shortly thereafter,

9 including by way of this lawsuit. By the time of trial, Defendants will have known and

10 intended (since receiving such notice) that their continued actions would actively induce

11 and contribute to the infringement of the claims of the '537 Patent.

12   45.   Defendants' affirmative acts of making, using, selling, offering for sale,

13 and/or importing the Accused Instrumentalities have induced and continue to induce

14 users of the Accused Instrumentalities to use the Accused Instrumentalities in their

15 normal and customary way to infringe the claims of the '537 Patent. Use of the Accused

16 Instrumentalities in their ordinary and customary fashion results in infringement of the

17 claims of the '537 Patent.

18   46.   For example, Defendants explain to customers the benefits of using the

19 Accused Instrumentalities, such as by touting their advantages of allowing users to use

20 the Spotify app to play music files stored on the users' desktop computer. Defendants

21 also induce their customers to use the Accused Instrumentalities to infringe other claims

22 of the '537 Patent. Defendants specifically intended and were aware that the normal and

23 customary use of the Accused Instrumentalities on compatible systems would infringe

24 the '537 Patent. Defendants performed the acts that constitute induced infringement,

25 and would induce actual infringement, with the knowledge of the '537 Patent and with

26 the knowledge, or willful blindness to the probability, that the induced acts would

27 constitute infringement. On information and belief, Defendants engaged in such

28 inducement to promote the sales of the Accused Instrumentalities, *e.g.,* through its user

manuals, product support, marketing materials, demonstrations, installation support, and training materials to actively induce the users of the accused products to infringe the '537 Patent. Accordingly, Defendants have induced and continue to induce end users of the accused products to use the accused products in their ordinary and customary way with compatible systems to make and/or use systems infringing the '537 Patent, knowing that such use of the Accused Instrumentalities with compatible systems will result in infringement of the '537 Patent. Accordingly, Defendants have been (since at least as of filing of the original complaint), and currently are, inducing infringement of the '537 Patent, in violation of 35 U.S.C. § 271(b).

47.   Defendants have also infringed, and continue to infringe, claims of the '537 Patent by offering to commercially distribute, commercially distributing, making, and/or importing the Accused Instrumentalities, which are used in practicing the process, or using the systems, of the '537 Patent, and constitute a material part of the invention. Defendants know the components in the Accused Instrumentalities to be especially made or especially adapted for use in infringement of the '537 Patent, not a staple article, and not a commodity of commerce suitable for substantial noninfringing use. For example, the ordinary way of using the Accused Instrumentalities infringes the patent claims, and as such, is especially adapted for use in infringement. Accordingly, Defendants have been, and currently are, contributorily infringing the '537 Patent, in violation of 35 U.S.C. § 271(c).

48.   For similar reasons, Defendants also infringe the '537 Patent by supplying or causing to be supplied in or from the United States all or a substantial portion of the components of the Accused Instrumentalities, where such components are uncombined in whole or in part, in such manner as to actively induce the combination of such components outside of the United States in a manner that would infringe the '537 Patent if such combination occurred within the United States. For example, Defendants supply or cause to be supplied in or from the United States all or a substantial portion of the software (e.g., the Spotify app) components of the Accused Instrumentalities in such a

1   manner as to actively induce the combination of such components (e.g., by instructing

2   users to use multiple devices, each with the Spotify app installed, to share files stored

3   on distinct devices) outside of the United States.

4   49.   Defendants also indirectly infringe the '537 Patent by supplying or causing

5   to be supplied in or from the United States components of the Accused Instrumentalities

6   that are especially made or especially adapted for use in infringing the '537 Patent and

7   are not a staple article or commodity of commerce suitable for substantial non-

8   infringing use, and where such components are uncombined in whole or in part,

9   knowing that such components are so made or adapted and intending that such

10   components are combined outside of the United States in a manner that would infringe

11   the '537 Patent if such combination occurred within the United States. Because the

12   Accused Instrumentalities are designed to operate as the claimed system and apparatus,

13   the Accused Instrumentalities have no substantial non-infringing uses, and any other

14   uses would be unusual, far-fetched, illusory, impractical, occasional, aberrant, or

15   experimental. For example, Defendants supply or cause to be supplied in or from the

16   United States all or a substantial portion of the software (e.g., the Spotify Premium app)

17   components that are especially made or especially adapted for use in the Accused

18   Instrumentalities, where such hardware and software components are not staple articles

19   or commodities of commerce suitable for substantial noninfringing use, knowing that

20   such components are so made or adapted and intending that such components are

21   combined outside of the United States, as evidenced by Defendants' own actions or

22   instructions to users in, e.g., combining multiple devices with the Spotify app installed,

23   into infringing systems, and enabling and configuring the infringing functionalities of

24   the Accused Instrumentalities.

25   50.   As a result of Defendants' infringement of the '537 Patent, Plaintiff Data

26   Scape is entitled to monetary damages in an amount adequate to compensate for

27   Defendants' infringement, but in no event less than a reasonable royalty for the use

28

1 made of the invention by Defendants, together with interest and costs as fixed by the

2 Court.

COUNT III

INFRINGEMENT OF U.S. PATENT NO. 9,380,112

5 51.   Plaintiff realleges and incorporates by reference the foregoing paragraphs,

6 as if fully set forth herein.

7 52.   Data Scape is the owner by assignment of United States Patent No.

8 9,380,112 ("the '112 Patent") entitled "Communication System And Its Method and

9 Communication Apparatus And Its Method." The '112 Patent was duly and legally

10 issued by the United States Patent and Trademark Office on June 28, 2016. A true and

11 correct copy of the '112 Patent is included as Exhibit C.

12 53.   In their most basic form, and ignoring many claim limitations, the claims

13 of the '112 Patent are directed to a data synchronization apparatus configured to

14 recognize an identifier of a portable device and a list of digital musical content stored

15 therein, and selectively transfer only edited portions of the musical content to the

16 portable device and assure the content is played back as a collection. The claims are not

17 directed to abstract ideas. The claims provide technical solutions to technical problems,

18 and, thus, are patent-eligible.

19 54.   As the '112 Patent states, the inventor, Akihiro Morohashi, working at

20 Sony Corporation, aimed to solve the problems skilled artisans in 1999 faced trying to

21 selectively transfer data between two electronic apparatuses. *E.g.,* '112 Patent, Col

22 2:16-54. For example, many used optical disks to accomplish this process, but that was

23 "cumbersome" and did not enable easy or random selection of files to transfer. *Id.* at

24 25-37. And when others burned digital files into hard disk drives or semiconductor

25 memory, those systems still required a large amount of time to selectively transfer

26 certain digital data between electronic apparatuses. *Id.* And in any case, there was no

27 reasonable way to selectively synchronize select digital content data between the

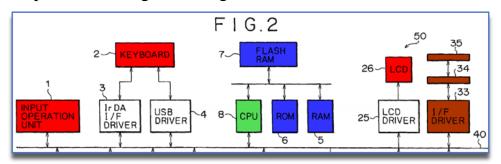28 apparatuses. *Id.* These problems were specific to the technological process of selective

1   digital-data transfer between electronic apparatuses. *Id.* at 1:42-2:37. And with over 28

2   columns of text and 13 figures, including Figure 2 below, the inventor taught various

3   technical solutions involving an unconventional server with a controller configured with

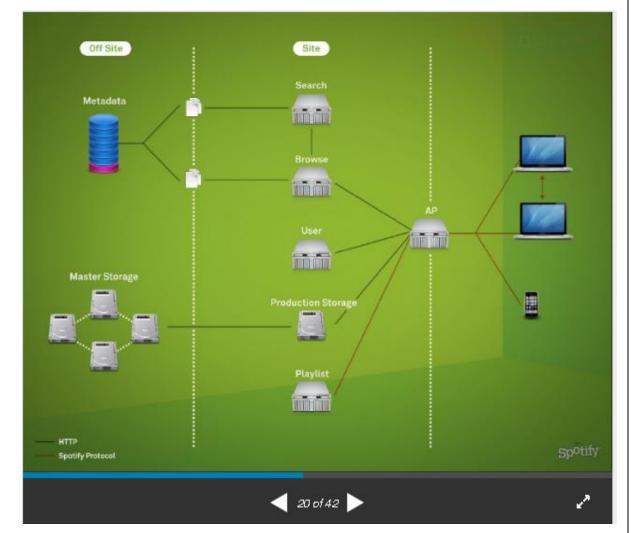4   circuitry to compare certain digital management information:

10   55.   Enabled by these teachings, the patent recites in its claims various

11   technical solutions to the existing technological problems and shortcomings. For

12   example, various claims require the then-unconventional system of electronic

13   components configured to use a digital "identifier" to compare, edit and selectively

14   transfer separate lists of digital musical content data between two apparatuses. See,

15   *e.g.,* '112 Patent, Claim 1 ("[a] communication apparatus configured to transfer data to

16   a portable apparatus . . . comprising … [b] a memory configured to store a first list of

17   musical content data; . . . [c] circuitry configured to …[i] edit the first list of musical

18   content data . . . [ii] compare the edited first list of musical content data a list of musical

19   content data stored in the portable apparatus; [iii] control transfer of selected musical

20   content data stored in the communication apparatus to the portable apparatus . . . based

21   on the result of the comparison . . .; and [iv] control playback of musical content data

22   based on the edited first list of musical content data so that . . . [the] musical content

23   data is played back as a collection, the edited first list of musical content data being

24   associated with an identifier stored in the communication apparatus that uniquely

25   identifies the portable apparatus.").

26   56.   The '112 patent and its file history make clear that each included

27   independent-claim limitations were not in the prior art, let alone well-understood,

28   routine, and conventional.   This includes the   claimed communication apparatus

1 configured to transfer data to a portable apparatus comprising (1) a memory configured

2 to store a first list of musical content data and (2)   circuitry configured to (a) edit the

3 first list of musical content data, (b) compare the edited first list of musical content data

4 a list of musical content data stored in the portable apparatus, (c) control transfer of

5 selected musical content data stored in the communication apparatus to the portable

6 apparatus based on the result of the comparison, and (d) control playback of musical

7 content data based on the edited first list of musical content data so that the musical

8 content data is played back as a collection, the edited first list of musical content data

9 being associated with an identifier stored in the communication apparatus that uniquely

10 identifies the portable apparatus. And the dependent claims also include limitations that

11 were not in the prior art, let alone well-understood, routine, and conventional. *See, e.g.,*

12 limitations of 2, 3, 4, 5, 6, 7, and 8 of the '112 patent.

13   57.   Defendants have offered for sale, sold and/or imported into the United

14 States products and services that infringe the '112 patent, and continues to do so. By

15 way of illustrative example, these infringing products and services include, without

16 limitation, Defendants' products and services, *e.g.*, the Spotify music streaming

17 platform, and all versions and variations thereof since the issuance of the '112 Patent

18 ("Accused Instrumentalities").

19   58.   The Accused Instrumentalities includes "[a] communication apparatus

20 configured to transfer data to a portable apparatus." For example, a mobile device with

21 the Spotify app installed (e.g. a portable apparatus) can be connected to a desktop

22 computer with the Spotify app installed (or Access Point, Production Storage, User and

23 Playlist), to transfer files, e.g. local files, stored on the desktop computer (e.g. a

24 communication apparatus) to the mobile device. *See, e.g.*, "Local Files", *available at*

25 https://support.spotify.com/us/using_spotify/features/listen-to-local-files/ ("In addition

26 to over 35 million tracks we offer, you can also use your Spotify app to play music files

27 stored on your computer (which we call "local files").").

28

https://www.slideshare.net/ricardovice/spotify-behind-the-scenes

59. The Accused Instrumentalities include a communication apparatus comprising "a memory configured to store a first list of musical content data." For example, the desktop computer with the Spotify app installed (and mobile devices and server components) contains memory that will store musical files as individual files, or as playlists: *See, e.g.*, "Local Files" ("In addition to over 35 million tracks we offer, you can also use your Spotify app to play music files stored on your computer (which we call "local files").").

60. The Accused Instrumentalities include a communication apparatus comprising "a data interface configured to detect a connection between the communication apparatus and the portable apparatus." For example, when the mobile device is connected to the desktop computer (or Access Point, Production Storage, User

1 and Playlist), the Spotify app on the desktop computer will display an identifier

2 associated with the mobile device. *See, e.g.*, "Spotify Connect" *available at*

3 https://support.spotify.com/us/listen_everywhere/in_the_car/spotify-connect/, ("Click

4 connect to a device in the bottom-right. Select the device you'd like to play on.").

5   61.   The Accused Instrumentalities further include circuitry configured to "edit

6 the first list of musical content based on input from a user without regard to the

7 connection of the communication apparatus and the portable apparatus." For example,

8 the Spotify app installed on the desktop computer allows a user to select the uploaded

9 files and add the files to a playlist without regard to whether the mobile device is

10 connected to the desktop computer. *See, e.g.*, "Local Files" ("2. Add the files to a

11 playlist. 3. Log in on your mobile or tablet using the same WiFi network as your desktop

12 app.").

13   62.   The Accused Instrumentalities further include circuitry configured to

14 "compare the edited first list of musical content with a list of musical content stored in

15 the portable apparatus." For example, when the mobile device is connected to the

16 desktop, the Spotify app will compare playlists of music present on the mobile device

17 to playlists present on the desktop to determine which files to transfer to the mobile

18 device. *See, e.g.*, "Local Files" ("2. Add the files to a playlist. 3. Log in on your mobile

19 or tablet using the same WiFi network as your desktop app. 4. Select [on the mobile

20 device] the playlist containing the local files.").

21   63.   The Accused Instrumentalities further include circuitry configured to

22 "control transfer of selected musical content data stored in the communication apparatus

23 to the portable apparatus via the data interface based on a result of the comparison after

24 the connection of the communication apparatus and the portable apparatus in

25 connected." For example, when the mobile device is connected to the desktop, the

26 Spotify app will compare playlists of music present on the mobile device to playlists

27 present on the desktop to determine which files to transfer to the mobile device. *See,*

28 *e.g.*, "Local Files" ("2. Add the files to a playlist. 3. Log in on your mobile or tablet

1   using the same WiFi network as your desktop app. 4. Select [on the mobile device] the

2   playlist containing the local files.").

3   64.   The Accused Instrumentalities further include circuitry configured to

4   "control playback of musical content data based on the edited first list of musical

5   content data so that the musical content data referenced in the edited first list of musical

6   content data is played back as a collection, the edited first list of musical content data

7   being associated with an identifier stored in the communication apparatus that uniquely

8   identifies the portable apparatus." For example, the local files stored on the desktop

9   computer are transferred to the portable device as part of a playlist, and can be played

10 back as part of a collection on the portable device. *See, e.g.*, "Local Files" ("2. Add the

11 files to a playlist. 3. Log in on your mobile or tablet using the same WiFi network as

12 your desktop app. 4. Select [on the mobile device] the playlist containing the local

13 files."). Further, when a portable device with the Spotify app installed (*e.g.*, a mobile

14 device or tablet) is connected to a desktop computer with the Spotify app installed, the

15 desktop computer will display an identifier associated with the portable device. *See,*

16 *e.g.*, "Spotify Connect" ("Click connect to a device in the bottom-right. Select the

17 device you'd like to play on.").

18   65.   Defendants have had knowledge of the '112 Patent and their infringement

19 since at least the filing of the original Complaint in this action, or shortly thereafter,

20 including by way of this lawsuit. By the time of trial, Defendants will have known and

21 intended (since receiving such notice) that their continued actions would actively induce

22 and contribute to the infringement of the claims of the '112 Patent.

23   66.   Defendants' affirmative acts of making, using, selling, offering for sale,

24 and/or importing the Accused Instrumentalities have induced and continue to induce

25 users of the Accused Instrumentalities to use the Accused Instrumentalities in their

26 normal and customary way to infringe the claims of the '112 Patent. Use of the Accused

27 Instrumentalities in their ordinary and customary fashion results in infringement of the

28 claims of the '112 Patent.

67.   For example, Defendants explain to customers the benefits of using the Accused Instrumentalities, such as by touting their advantages of allowing users to use the Spotify app to play music files stored on the users' desktop computer. Defendants also induce their customers to use the Accused Instrumentalities to infringe other claims of the '112 Patent. Defendants specifically intended and was aware that the normal and customary use of the Accused Instrumentalities on compatible systems would infringe the '112 Patent. Defendants performed the acts that constitute induced infringement, and would induce actual infringement, with the knowledge of the '112 Patent and with the knowledge, or willful blindness to the probability, that the induced acts would constitute infringement.   On information and belief, Defendants engaged in such inducement to promote the sales of the Accused Instrumentalities, *e.g.,* through its user manuals, product support, marketing materials, demonstrations, installation support, and training materials to actively induce the users of the accused products to infringe the '112 Patent. Accordingly, Defendants have induced and continue to induce end users of the accused products to use the accused products in their ordinary and customary way with compatible systems to make and/or use systems infringing the '112 Patent, knowing that such use of the Accused Instrumentalities with compatible systems will result in infringement of the '112 Patent. Accordingly, Defendants have been (since at least as of filing of the original complaint), and currently are, inducing infringement of the '112 Patent, in violation of 35 U.S.C. § 271(b).

68.   Defendants have also infringed, and continue to infringe, claims of the '112 Patent by offering to commercially distribute, commercially distributing, making, and/or importing the Accused Instrumentalities, which are used in practicing the process, or using the systems, of the '112 Patent, and constitute a material part of the invention. Defendants know the components in the Accused Instrumentalities to be especially made or especially adapted for use in infringement of the '112 Patent, not a staple article, and not a commodity of commerce suitable for substantial noninfringing use. For example, the ordinary way of using the Accused Instrumentalities infringes the

1 patent claims, and as such, is especially adapted for use in infringement. Accordingly,

2 Defendants have been, and currently are, contributorily infringing the '112 Patent, in

3 violation of 35 U.S.C. § 271(c).

4   69.   For similar reasons, Defendants also infringe the '112 Patent by supplying

5 or causing to be supplied in or from the United States all or a substantial portion of the

6 components of the Accused Instrumentalities, where such components are uncombined

7 in whole or in part, in such manner as to actively induce the combination of such

8 components outside of the United States in a manner that would infringe the '112 Patent

9 if such combination occurred within the United States. For example, Defendants supply

10 or cause to be supplied in or from the United States all or a substantial portion of the

11 software (e.g., the Spotify app) components of the Accused Instrumentalities in such a

12 manner as to actively induce the combination of such components (e.g., by instructing

13 users to use multiple devices, each with the Spotify app installed, to share files stored

14 on distinct devices) outside of the United States.

15   70.   Defendants also indirectly infringe the '112 Patent by supplying or causing

16 to be supplied in or from the United States components of the Accused Instrumentalities

17 that are especially made or especially adapted for use in infringing the '112 Patent and

18 are not a staple article or commodity of commerce suitable for substantial non-

19 infringing use, and where such components are uncombined in whole or in part,

20 knowing that such components are so made or adapted and intending that such

21 components are combined outside of the United States in a manner that would infringe

22 the '112 Patent if such combination occurred within the United States. Because the

23 Accused Instrumentalities are designed to operate as the claimed system and apparatus,

24 the Accused Instrumentalities have no substantial non-infringing uses, and any other

25 uses would be unusual, far-fetched, illusory, impractical, occasional, aberrant, or

26 experimental. For example, Defendants supply or cause to be supplied in or from the

27 United States all or a substantial portion of the software (e.g., the Spotify Premium app)

28 components that are especially made or especially adapted for use in the Accused

1   Instrumentalities, where such hardware and software components are not staple articles

2   or commodities of commerce suitable for substantial noninfringing use, knowing that

3   such components are so made or adapted and intending that such components are

4   combined outside of the United States, as evidenced by Defendants' own actions or

5   instructions to users in, e.g., combining multiple devices with the Spotify app installed,

6   into infringing systems, and enabling and configuring the infringing functionalities of

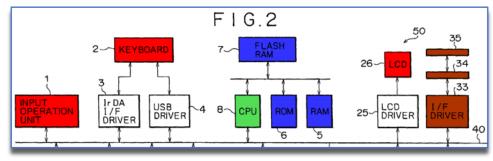7   the Accused Instrumentalities.

8   71.   As a result of Defendants' infringement of the '112 Patent, Plaintiff Data

9   Scape is entitled to monetary damages in an amount adequate to compensate for

10   Defendants' infringement, but in no event less than a reasonable royalty for the use

11   made of the invention by Defendants, together with interest and costs as fixed by the

12   Court.

13   **COUNT IV**

14   **INFRINGEMENT OF U.S. PATENT NO. 9,712,614**

15   72.   Plaintiff realleges and incorporates by reference the foregoing paragraphs,

16   as if fully set forth herein.

17   73.   Data Scape is the owner by assignment of United States Patent No.

18   9,712,614 ("the '614 Patent") entitled "Communication System And Its Method and

19   Communication Apparatus And Its Method." The '614 Patent was duly and legally

20   issued by the United States Patent and Trademark Office on July 18, 2017. A true and

21   correct copy of the '614 Patent is included as Exhibit D.

22   74.   In their most basic form, and ignoring many claim limitations, the claims

23   of the '614 Patent are directed to a data synchronization apparatus configured to

24   recognize an identifier of a portable device and a list of digital musical content stored

25   therein, and selectively transfer to the portable device only musical content found in the

26   communication apparatus and not in the portable device and assure the content is played

27   back as a collection. The claims are not directed to abstract ideas. The claims provide

28   technical solutions to technical problems, and, thus, are patent-eligible.

75.   As the '614 Patent states, the inventor, Akihiro Morohashi, working at Sony Corporation, aimed to solve the problems skilled artisans in 1999 faced trying to selectively transfer data between two electronic apparatuses. *E.g.,* '614 Patent, Col 2:16-54. For example, many used optical disks to accomplish this process, but that was "cumbersome" and did not enable easy or random selection of files to transfer. *Id.* at 25-37.   And when others burned digital files into hard disk drives or semiconductor memory, those systems still required a large amount of time to selectively transfer certain digital data between electronic apparatuses. *Id.* And in any case, there was no reasonable way to selectively synchronize select digital content data between the apparatuses. *Id.* These problems were specific to the technological process of selective digital-data transfer between electronic apparatuses. *Id.* at 1:42-2:37. And with over 28 columns of text and 13 figures, including Figure 2 below, the inventor taught various technical solutions involving an unconventional server with a controller configured with circuitry to compare certain digital management information:

76.   Enabled by these teachings, the patent recites in its claims various technical solutions to the existing technological problems and shortcomings. For example, various claims require the then-unconventional system of electronic components configured to use a digital "identifier" to compare, edit and selectively transfer separate lists of digital musical content data between two apparatuses. See, e.g., '614 Patent, Claim 1 ("[a] communication apparatus comprising … [a] a memory configured to store musical content data and a plurality of lists associated with the musical content data; [b] a data interface configured to interface with an external reproduction apparatus; [c] circuitry configured to [i] control playback of musical

1   content data based on a program list so that the musical content data referenced in the

2   program list is played back as collection, the program list being associated with a

3   predetermined identified; . . . [ii] accept edits to the program list; [iii] determine whether

4   an identifier received by the circuitry via the data interface is the predetermined

5   identifier; [iv] control transfer of the musical content data to the predetermined external

6   reproduction apparatus . . . based on the program list; [v] compare the program list with

7   a second list of musical content data stored in the predetermined external reproduction

8   apparatus; [vi] identify a piece of musical content data common to the program list and

9   the second list based on the result of the comparison; and [vi] control transfer to the

10 predetermined external reproduction apparatus of the musical content data . . . such that

11 transfer of the identified piece of musical content data common to the program list and

12 the second list is omitted").

13   77.   The '614 patent and its file history make clear that each included

14 independent-claim limitations were not in the prior art, let alone well-understood,

15 routine, and conventional. This includes the communication apparatus comprising (1)

16 a memory configured to store musical content data and a plurality of lists associated

17 with the musical content data; (2) a data interface configured to interface with an

18 external reproduction apparatus; (3) circuitry configured to [i] control playback of

19 musical content data based on a program list so that the musical content data referenced

20 in the program list is played back as collection, the program list being associated with

21 a predetermined identified; [ii] accept edits to the program list; [iii] determine whether

22 an identifier received by the circuitry via the data interface is the predetermined

23 identifier; [iv] control transfer of the musical content data to the predetermined external

24 reproduction apparatus based on the program list; [v] compare the program list with a

25 second list of musical content data stored in the predetermined external reproduction

26 apparatus; [vi] identify a piece of musical content data common to the program list and

27 the second list based on the result of the comparison; and [vi] control transfer to the

28 predetermined external reproduction apparatus of the musical content data such that

transfer of the identified piece of musical content data common to the program list and the second list is omitted. And the dependent claims also include limitations that were not in the prior art, let alone well-understood, routine, and conventional. *See, e.g.,* limitations of 2, 3, 4, 5, 6, 7, 8. 9, 10, and 11 of the '614 patent.

78.   Defendants have offered for sale, sold and/or imported into the United States products and services that infringe the '614 patent, and continues to do so. By way of illustrative example, these infringing products and services include, without limitation, Defendants' products and services, *e.g.*, the Spotify music streaming platform, and all versions and variations thereof since the issuance of the '614 Patent ("Accused Instrumentalities").

79.   The Accused Instrumentalities includes "[a] communication apparatus." For example, a mobile device with the Spotify app installed can be connected to a desktop computer with the Spotify app installed, to transfer files, e.g. local files, stored on the desktop computer (or Access Point, Production Storage, User and Playlist) (e.g. a communication apparatus) to the mobile device. *See, e.g.*, "Local Files", *available at* https://support.spotify.com/us/using_spotify/features/listen-to-local-files/ ("In addition to over 35 million tracks we offer, you can also use your Spotify app to play music files stored on your computer (which we call "local files").").

https://www.slideshare.net/ricardovice/spotify-behind-the-scenes

80.   The Accused Instrumentalities include a communication apparatus comprising "a memory configured to store musical content data and a plurality of program lists associated with the musical content data." For example, the desktop computer with the Spotify app installed (or mobile devices or server components) contains memory that will store musical files as individual files, or as playlists: *See, e.g.*, "Local Files" ("In addition to over 35 million tracks we offer, you can also use your Spotify app to play music files stored on your computer (which we call "local files").").

81.   The Accused Instrumentalities include a communication apparatus further comprising "a data interface configured to interface with an external reproduction apparatus." For example, when a mobile device or tablet (e.g. external reproduction

apparatus) is connected to the desktop computer with the Spotify app installed (or Access Point, Production Storage, User and Playlist) (e.g. the communication apparatus), the desktop computer will display a graphic user interface through the Spotify app, allowing access to the data contained on the portable device. *See, e.g.*, "Spotify Connect" ("Click connect to a device in the bottom-right. Select the device you'd like to play on.").

82.   The Accused Instrumentalities further include a communication apparatus comprising circuitry configured to "control playback of musical content data based on a program lists so that the musical content data referenced in the program list is played back as a collection, the program list being associated with a predetermined identifier uniquely identifying a predetermined external reproduction apparatus among a plurality of reproduction apparatuses. For example, the Spotify app allows musical files to be played as a "Playlist" consisting of a collection of musical files. *See, e.g.,* "Playlists" *available at* https://support.spotify.com/us/using_spotify/playlists/create-a-playlist/, ("Put simply, a playlist is a collection of music. You can make them for yourself, you can share them, and you can enjoy the millions of other playlists created by Spotify, artists, and fans." Further, when a mobile device with the Spotify app installed is connected to a desktop computer with the Spotify app installed, the desktop computer will display an identifier associated with the mobile device, while also displaying other identifiers associated with other playback devices (e.g., a plurality of external reproduction apparatuses).

83.   The Accused Instrumentalities further include a communication apparatus comprising circuitry configured to "control presentation of the program list to a user via user interface." For example, the Spotify app includes a graphic user interface that will show the Playlists that are available.

84.   The Accused Instrumentalities further include a communication apparatus comprising circuitry configured to accept edits to the program list via the user interface. For example, using the Spotify app, a user can edit or modify Playlists. *See, e.g.,*

"Playlists" ("Create a playlist 1. Click New Playlist in the menu on the left. 2. Give your playlist a name and click CREATE.").

85.   The Accused Instrumentalities further include circuitry configured to "determine whether an identifier received by the circuitry via the data interface is the predetermined identifier." For example, when external reproduction apparatus (*e.g.* a mobile device or tablet) is connected to the desktop computer, the Spotify app will display an identifier associated with that device. *See, e.g.*, "Spotify Connect" ("Click connect to a device in the bottom-right. Select the device you'd like to play on.").

86.   The Accused Instrumentalities further include circuitry configured to "control transfer of the musical content data to the predetermine external reproduction apparatus via the data interface based on the program list when the received identifier is the predetermined identifier without receiving information on selection of the musical content data from the predetermined external reproduction apparatus." For example, if a "local file" on the desktop is deleted from the desktop, that local file is also deleted from any playlist on the desktop Spotify app that included the deleted local file. Upon the next sync between the Spotify app on the desktop and the Spotify app on mobile device, the local file is then deleted from the mobile device.

87.   The Accused Instrumentalities further include circuitry configured to "compare the program list with a second list of musical content data stored in the predetermined external reproduction apparatus." For example, when the mobile device is connected to the desktop, the Spotify app will compare playlists of music present on the mobile device to playlists present on the desktop to determine which files to transfer to the mobile device. *See, e.g.*, "Local Files" ("2. Add the files to a playlist. 3. Log in on your mobile or tablet using the same WiFi network as your desktop app. 4. Select [on the mobile device] the playlist containing the local files.").

88.   The Accused Instrumentalities further include circuitry configured to "identify a piece of musical content data common to the program list and the second list based on the result of the comparison." For example, the Spotify app will determine

what files in the playlist are "local files" that can be downloaded, and what files are already on both the desktop computer and the mobile device. *See, e.g.*, "Local Files" ("2. Add the files to a playlist. 3. Log in on your mobile or tablet using the same WiFi network as your desktop app. 4. Select [on the mobile device] the playlist containing the local files."). Local files already present on both the mobile device and the desktop computer can be played and remain so when the "Download Songs" switch is in the "Off" position.

89.   The Accused Instrumentalities further include circuitry configured to "control transfer to the predetermined external reproduction apparatus of the musical content data that is in the program list and is not in the second list of musical content data based on the result of the comparison such that transfer of the identified piece of musical content data common to the program list and the second list is omitted." For example, after determining which Local Files have already been downloaded to the mobile device, the Spotify app will download only those Local Files from the desktop computer that are not present in the mobile device. *See, e.g.*, "Local Files" ("2. Add the files to a playlist. 3. Log in on your mobile or tablet using the same WiFi network as your desktop app. 4. Select the playlist containing the local files. 5. Switch on download.").

90.   Defendants have had knowledge of the '614 Patent and their infringement since at least the filing of the original Complaint in this action, or shortly thereafter, including by way of this lawsuit. By the time of trial, Defendants will have known and intended (since receiving such notice) that their continued actions would actively induce and contribute to the infringement of the claims of the '614 Patent.

91.   Defendants' affirmative acts of making, using, selling, offering for sale, and/or importing the Accused Instrumentalities have induced and continue to induce users of the Accused Instrumentalities to use the Accused Instrumentalities in their normal and customary way to infringe the claims of the '614 Patent. Use of the Accused

1 Instrumentalities in their ordinary and customary fashion results in infringement of the

2 claims of the '614 Patent.

3   92.   For example, Defendants explain to customers the benefits of using the

4 Accused Instrumentalities, such as by touting their advantages of allowing users to use

5 the Spotify app to play music files stored on the users' desktop computer. Defendants

6 also induce their customers to use the Accused Instrumentalities to infringe other claims

7 of the '614 Patent. Defendants specifically intended and was aware that the normal and

8 customary use of the Accused Instrumentalities on compatible systems would infringe

9 the '614 Patent. Defendants performed the acts that constitute induced infringement,

10 and would induce actual infringement, with the knowledge of the '614 Patent and with

11 the knowledge, or willful blindness to the probability, that the induced acts would

12 constitute infringement.   On information and belief, Defendants engaged in such

13 inducement to promote the sales of the Accused Instrumentalities, *e.g.,* through their

14 user manuals, product support, marketing materials, demonstrations, installation

15 support, and training materials to actively induce the users of the accused products to

16 infringe the '614 Patent. Accordingly, Defendants have induced and continue to induce

17 end users of the accused products to use the accused products in their ordinary and

18 customary way with compatible systems to make and/or use systems infringing the '614

19 Patent, knowing that such use of the Accused Instrumentalities with compatible systems

20 will result in infringement of the '614 Patent. Accordingly, Defendants have been (since

21 at least as of filing of the original complaint), and currently are, inducing infringement

22 of the '614 Patent, in violation of 35 U.S.C. § 271(b).

23   93.   Defendants have also infringed, and continue to infringe, claims of

24 the '614 Patent by offering to commercially distribute, commercially distributing,

25 making, and/or importing the Accused Instrumentalities, which are used in practicing

26 the process, or using the systems, of the '614 Patent, and constitute a material part of

27 the invention. Defendants know the components in the Accused Instrumentalities to be

28 especially made or especially adapted for use in infringement of the '614 Patent, not a

staple article, and not a commodity of commerce suitable for substantial noninfringing use. For example, the ordinary way of using the Accused Instrumentalities infringes the patent claims, and as such, is especially adapted for use in infringement. Accordingly, Defendants have been, and currently are, contributorily infringing the '614 Patent, in violation of 35 U.S.C. § 271(c).

94.   For similar reasons, Defendants also infringe the '614 Patent by supplying or causing to be supplied in or from the United States all or a substantial portion of the components of the Accused Instrumentalities, where such components are uncombined in whole or in part, in such manner as to actively induce the combination of such components outside of the United States in a manner that would infringe the '614 Patent if such combination occurred within the United States. For example, Defendants supply or cause to be supplied in or from the United States all or a substantial portion of the software (e.g., the Spotify app) components of the Accused Instrumentalities in such a manner as to actively induce the combination of such components (e.g., by instructing users to use multiple devices, each with the Spotify app installed, to share files stored on distinct devices) outside of the United States.

95.   Defendants also indirectly infringe the '614 Patent by supplying or causing to be supplied in or from the United States components of the Accused Instrumentalities that are especially made or especially adapted for use in infringing the '614 Patent and are not a staple article or commodity of commerce suitable for substantial non-infringing use, and where such components are uncombined in whole or in part, knowing that such components are so made or adapted and intending that such components are combined outside of the United States in a manner that would infringe the '614 Patent if such combination occurred within the United States. Because the Accused Instrumentalities are designed to operate as the claimed system and apparatus, the Accused Instrumentalities have no substantial non-infringing uses, and any other uses would be unusual, far-fetched, illusory, impractical, occasional, aberrant, or experimental. For example, Defendants supply or cause to be supplied in or from the

United States all or a substantial portion of the software (e.g., the Spotify Premium app) components that are especially made or especially adapted for use in the Accused Instrumentalities, where such hardware and software components are not staple articles or commodities of commerce suitable for substantial noninfringing use, knowing that such components are so made or adapted and intending that such components are combined outside of the United States, as evidenced by Defendants' own actions or instructions to users in, e.g., combining multiple devices with the Spotify app installed, into infringing systems, and enabling and configuring the infringing functionalities of the Accused Instrumentalities.

96.   As a result of Defendants' infringement of the '614 Patent, Plaintiff Data Scape is entitled to monetary damages in an amount adequate to compensate for Defendants' infringement, but in no event less than a reasonable royalty for the use made of the invention by Defendants, together with interest and costs as fixed by the Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Data Scape respectfully requests that this Court enter:

a.   A judgment in favor of Plaintiff that Defendants have infringed, either literally and/or under the doctrine of equivalents, the '929 Patent, the '537 Patent, the '614 Patent, and the '112 Patent (collectively, "asserted patents");

b.   A permanent injunction prohibiting Defendants from further acts of infringement of the asserted patents;

c.   A judgment and order requiring Defendants to pay Plaintiff its damages, costs, expenses, and prejudgment and post-judgment interest for its infringement of the asserted patents, as provided under 35 U.S.C. § 284;

d.   A judgment and order requiring Defendants to provide an accounting and to pay supplemental damages to Data Scape, including without limitation, prejudgment and post-judgment interest;

e.   A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Plaintiff its reasonable attorneys' fees against Defendants; and

f.   Any and all other relief as the Court may deem appropriate and just under the circumstances.

DEMAND FOR JURY TRIAL

Plaintiff, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

Respectfully Submitted,

Dated: March 25, 2019

/s/ Reza Mirzaie
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