

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MICHAEL SANDBORN & MARK
SANDBORN PARTNERSHIP,
MICHAEL SANDBORN, MARK
SANDBORN, and MS SQUARED,

Plaintiffs,

v.

AVID TECHNOLOGY, INC.,

Defendant

C. A. No. 11-1472-JLT

AMENDED COMPLAINT

PLAINTIFFS DEMAND A TRIAL BY JURY ON ALL COUNTS

Plaintiffs Michael Sandborn & Mark Sandborn Partnership, Michael Sandborn, Mark Sandborn, and MS Squared (collectively, "Plaintiffs") hereby file this complaint for patent infringement against Avid Technology, Inc., and state as follows:

PARTIES

1. Plaintiff Michael Sandborn & Mark Sandborn Partnership is a partnership with a principal place of business in Asheville, North Carolina, and does business under the name MS Squared.
2. Plaintiff Michael Sandborn resides in Chattanooga, TN.
3. Plaintiff Mark Sandborn resides in Asheville, NC.
4. Plaintiff MS Squared is a partnership with a principal place of business in Asheville, North Carolina.

5. Defendant Avid Technology, Inc. ("Avid") is a Delaware corporation with a principal place of business in Burlington, Massachusetts. Avid regularly sells products in the Commonwealth of Massachusetts and maintains full time employees within the Commonwealth.

JURISDICTION AND VENUE

6. Pursuant to 28 U.S.C. §§ 1331 and 1338(a), this District Court has original jurisdiction over the subject matter of this civil action since it arises under the laws of the United States, in particular 35 U.S.C. § 271.

7. This District Court has personal jurisdiction over Avid because Avid has a principal place of business within the District.

8. Venue is proper in this District pursuant to 28 U.S.C. § 1400(b) because Avid has a regular and established place of business within the District and has committed acts of infringement within the District.

FACTUAL ALLEGATIONS

9. On August 16, 2005, the United States Patent and Trademark Office issued Patent No. 6,930,235 B2 ("the '235 Patent") to Plaintiffs for "A System and Method for Relating Electromagnetic Waves to Sound Waves." Among other claims, the '235 Patent covers methods and systems of assigning colors to musical notes and musical notation. The patent also covers methods and systems that create musical notation with colors assigned with the methods and systems disclosed. The '235 Patent also covers methods and systems that read and display such musical notation, including systems which incorporate computer processing.

10. Plaintiffs have owned all rights to the '235 Patent throughout the period of Avid's infringing acts and Plaintiffs continue to own the patent. The '235 Patent is in full force and effect and all maintenance fees on the patent have been paid to date.

11. Sibelius is a popular software product which creates, reads, displays, and prints musical scores. Its features include the ability to create, read, display, and print musical scores with colored musical annotation. Since 2001, Sibelius has used, without authority from Plaintiffs, the methods and systems identified in the '235 Patent to accomplish the aforementioned features. Prior to July 28, 2006, Sibelius was manufactured and distributed by Sibelius Software Ltd. ("Sibelius Ltd."), a British company. On July 28, 2006, Avid acquired Sibelius Ltd. through merger, together with all rights to the Sibelius software. As a result of the merger, Avid is responsible for all liabilities of Sibelius Ltd. which accrued prior to the merger, including all liabilities for patent infringement.

12. From the issuance of the '235 Patent, Avid and its predecessors in interest have infringed the methods and systems disclosed in the '235 Patent by making, using, selling, and offering to sell Sibelius within the United States.

13. On or about February 20, 2009, Avid was informed of the existence of the '235 Patent, and of Plaintiffs' contention that Sibelius infringed the patent. After reviewing the patent with counsel, Avid elected not to license the '235 Patent and to not remove from Sibelius all uses of the protected methods and systems disclosed in the '235 Patent. After Avid learned of the '235 Patent, Sibelius continued to infringe the patent and Avid continued to make, sell, and distribute Sibelius in the United States.

14. On or about May 2009, Avid released a new version of Sibelius: version 6. Version 6 eliminated a feature of Sibelius, called Pitch Spectrum, that created colored musical scores. Pitch Spectrum had been a core component of Sibelius since 2001 and had been incorporated in versions 2 through 5 of Sibelius. Pitch Spectrum blatantly infringed the '235 Patent.

15. Pitch Spectrum was a valuable and useful feature of Sibelius and Sibelius users complained to Avid about its removal. Some of the complaints were posted on a moderated forum on the Avid website. In response to inquiries from users as to why Pitch Spectrum was removed from Sibelius, Daniel Spreadbury, an Avid employee who was the project manager for Sibelius, stated that Pitch Spectrum was removed "for legal reasons."

16. On the Sibelius forum maintained on Avid's website, Sibelius users continued to request that Pitch Spectrum be returned to Sibelius, or that the users be provided with a work-around to return Pitch Spectrum's color functionality to version 6 of Sibelius. Avid was aware that any method or system that returned Pitch Spectrum's color functionality to version 6 (or later versions) of Sibelius would violate the protected methods and systems described in the '235 Patent. Nonetheless, Avid posted such work-arounds on their web site, one of which was posted by Spreadbury himself. By posting these work-arounds, Avid knew that the end users who used newer versions of Sibelius would violate the '235 patent regardless of whether Pitch Spectrum was included in the product or not. By instructing the end users how to regain the functionality of Pitch Spectrum, Avid induced infringements of the '235 patent.

FIRST CAUSE OF ACTION
VIOLATION OF 35 U.S.C. § 271(a)

17. Plaintiffs repeat and reallege the allegations set forth in Paragraph 1 through 16 above as though set forth herein.

18. From the issuance of the '235 patent, Avid and its predecessor in interest have made and used the patented inventions embodied and claimed in the '235 Patent and have sold and offered to sell a product that embodies the patented inventions disclosed and claimed in the '235 Patent. Such actions constitute patent infringement in violation of 35 U.S.C. § 271.

19. Since February 2009, after it was notified of the existence of the '235 Patent, Avid's conduct has been willful.

WHEREFORE, Plaintiffs request that this Court:

- (a) Enter an injunction enjoining Avid from infringing the '235 Patent;
- (b) Enter a judgment against Avid that awards Plaintiffs damages adequate to compensate Plaintiffs for the infringement, but no less than a reasonable royalty;
- (c) Award Plaintiffs treble damages for all infringing conduct that occurred subsequent to February 20, 2009 due to Avid's willful conduct;
- (d) Award Plaintiffs their costs and reasonable attorneys' fees for prosecuting this action; and
- (e) Enter such other relief which the Court finds just and equitable.

SECOND CAUSE OF ACTION
VIOLATION OF 35 U.S.C. § 271(b)

20. Plaintiffs repeat and reallege all of the allegations set forth in paragraphs 1 through 19 as though set forth herein.

21. Subsequent to the release of version 6 of Sibelius, Avid, on its website, has instructed Sibelius users how to infringe the Partnership's patent. As a result of these instructions and encouragement, users of Sibelius have repeatedly and continuously infringed the Partnership's patent.

22. Such conduct by Avid constitutes active inducement of an infringement. Such conduct by Avid was willful and knowing.

WHEREFORE, Plaintiffs request that this Court:

- (a) Enter an injunction enjoining Avid from inducing infringement of the '235 Patent;
- (b) Enter a judgment against Avid that awards Plaintiffs damages adequate to compensate Plaintiffs for the induced infringements, but no less than a reasonable royalty;
- (c) Award Plaintiffs treble damages for all infringing conduct that occurred subsequent to February 20, 2009 due to Avid's willful conduct;
- (d) Award Plaintiffs their costs and reasonable attorneys' fees for prosecuting this action; and
- (e) Enter such other relief which the Court finds just and equitable.

Respectfully submitted,

**MICHAEL SANDBORN & MARK
SANDBORN PARTNERSHIP,
MICHAEL SANDBORN, MARK
SANDBORN, AND MS SQUARED,**

By their attorneys,

Dated: October 18, 2011

/s/ Thomas M. Greene

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CERTIFICATE OF SERVICE

I, Thomas M. Greene, hereby certify that a true copy of the above document was served on the following party by certified mail on October 18, 2011:

Paige Parisi, Vice President & General Counsel
Avid Technology, Inc.
75 Network Drive
Burlington, MA 01803

/s/Thomas M. Greene
Thomas M. Greene