

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

Personal Audio, LLC,)	
)	
Plaintiff,)	
)	
v.)	
)	
XM Satellite Radio, Inc.,)	Case No: _____
)	
Defendant.)	JURY TRIAL DEMANDED
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COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Personal Audio, LLC (“Personal Audio”) states and alleges as follows:

PARTIES

1. Personal Audio is a Texas limited liability company.
2. Defendant XM Satellite Radio, Inc. (“XM”) is a Delaware Corporation with its principal place of business at 1500 Eckington Place Northeast, Washington, District of Columbia 20002, and doing business throughout this judicial district and throughout the United States.

JURISDICTION

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a), in that this action arises under the federal patent statutes, 35 U.S.C. §§ 271 and 281-285.

4. This Court has personal jurisdiction over XM because it has committed acts giving rise to this action within Texas and within this judicial district and has established minimum contacts within the forum such that the exercise of jurisdiction over XM would not offend traditional notions of fair play and substantial justice. For example, XM has committed acts of infringement in this District, by among other things, offering to sell and selling products that infringe the asserted patents, including portable music players.

VENUE

5. Venue in the Eastern District of Texas is proper pursuant to 28 U.S.C. §§ 1391(b), (c) and 1400(b) because XM has committed acts within this judicial district giving rise to this action, and XM has and continues to conduct business in this judicial district, including one or more acts of selling, using, importing and/or offering for sale infringing products or providing service and support to XM's customers in this District.

6. Venue in the Eastern District of Texas is also proper because Personal Audio is organized and governed by the Texas Business Organizations Code and subject to taxes in Texas. Personal Audio maintains a registered agent for service of process in Texas. Personal Audio maintains office space in Beaumont, Texas, within this District, at 550 Fannin Street, Suite 500, where Personal Audio maintains originals and copies of its documents.

7. Venue in the Eastern District of Texas is also proper because a related matter entitled, Personal Audio, LLC v. Apple, Inc., et al., Civil Action No. 9:09CV-111, is proceeding in the District in front of Judge Ron Clark. That related case involves the same asserted patents and accuses similar technology, including similar accused products sold by XM's parent company, Sirius XM Radio, Inc.

BACKGROUND

Personal Audio

8. James D. Logan (“Logan”) founded Personal Audio.
9. Logan, Charlie G. Call, and Daniel F. Goessling are co-inventors of the following United States Patents: United States Patent 6,199,076 entitled “Audio Program Player Including a Dynamic Program Selection Controller” (“the ‘076 patent”) (attached as Exhibit A) and United States Patent 7,509,178 entitled “Audio Program Distribution and Playback System” (“the ‘178 patent”) (attached as Exhibit B) (collectively “the Asserted Patents”). The United States Patent Office duly issued the ‘076 patent on March 6, 2001, and the ‘178 patent on March 24, 2009.
10. The Asserted Patents share a common specification, which was filed on October 2, 1996.
11. Among other things, the common specification describes “an audio program player which automatically plays a predetermined schedule of audio program segments and which further includes simple controls that allow the listener to perform” functions such as skipping forward or backward. In addition, the common specification describes a “simplified player for mobile use.”
12. The common specification further describes “the ability to navigate the program using only audio prompts and/or small number of buttons for a user interface make the playback system which utilizes these features of the invention particularly attractive for use by automobile drivers, who can select their program content much more effectively and with less drive distraction than currently possible with a conventional automobile radio, tape or CD player.”
13. Personal Audio owns the Asserted Patents. Personal Audio maintains all rights to enforce the Asserted Patents.

COUNT I
XM'S PATENT INFRINGEMENT (THE '076 PATENT)

14. Personal Audio restates and realleges each of the allegations set forth above and incorporates them herein.

15. XM has infringed and continues to infringe the '076 patent by making, using, selling, and/or offering to sell within the United States products that embody one or more of the claims of the '076 patent, or by contributing to the infringement of the '076 patent, inducing others to infringe the '076 patent, or carrying out other acts constituting infringement under 35 U.S.C. § 271(f). Such infringing conduct includes, but is not limited to, making, using, operating, selling or offering to sell the XMp3 player, and the Inno and Inno 2 players, among others, or having done so in the past.

16. XM does not have a license or permission to use the claimed subject matter in the '076 patent.

17. As a direct and proximate result of XM's infringement of the '076 patent, Personal Audio has been injured and has been caused significant financial damage.

18. XM will continue to infringe the '076 patent, and thus cause irreparable injury and damage to Personal Audio, unless enjoined by this court.

COUNT VI
XM'S PATENT INFRINGEMENT (THE '178 PATENT)

19. Personal Audio restates and realleges each of the allegations set forth above and incorporates them herein.

20. XM has infringed and continues to infringe the '178 patent by making, using, selling, and/or offering to sell within the United States products that embody one or more of the claims of the '178 patent, or by contributing to the infringement of the '178 patent, inducing

others to infringe the '178 patent, or carrying out other acts constituting infringement under 35 U.S.C. § 271(f). Such infringing conduct includes, but is not limited to, making, using, operating, selling, or offering to sell the XMp3 player, and the Inno and Inno 2 players, among others, or having done so in the past.

21. XM does not have a license or permission to use the claimed subject matter in the '178 patent.

22. As a direct and proximate result of XM's infringement of the '178 patent, Personal Audio has been injured and has been caused significant financial damage.

23. XM will continue to infringe the '178 patent, and thus cause irreparable injury and damage to Personal Audio, unless enjoined by this court.

PRAYER FOR RELIEF

WHEREFORE, Personal Audio prays for the following relief:

1. A declaration that XM has infringed the Asserted Patents, and is liable to Personal Audio for infringement.

2. An award of damages adequate to compensate Personal Audio for XM's infringement of the Asserted Patents.

3. A post-judgment equitable accounting of damages for the period of infringement of the Asserted Patents following the period of damages established by Personal Audio at trial.

4. An order enjoining XM from infringing, inducing others to infringe, or contributing to the infringement of the Asserted Patents.

5. If a permanent injunction is not granted, a judicial determination of the conditions for future infringement such as a royalty bearing compulsory license or such other relief as the Court deems appropriate.

6. An order requiring XM to deliver for destruction all infringing products in its possession.
7. A finding that this case is exceptional pursuant to 35 U.S.C. § 285.
8. An award of prejudgment interest, costs and disbursements, and attorney fees.
9. Such other and further relief as the Court deems Personal Audio may be entitled to in law and equity.

JURY DEMAND

A jury trial is demanded on all issues so triable, pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Dated: March 16, 2010

By: /s/ Charles W. Goehringer, Jr.
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