

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

<b>AERIELLE, INC.</b>	§	
<b>Plaintiff,</b>	§	
	§	
<b>v.</b>	§	<b>CASE NO. 2:06 CV 382-TJW</b>
	§	
<b>MONSTER CABLE PRODUCTS, INC.,</b>	§	
<b>Defendant.</b>	§	

**PLAINTIFF'S AMENDED COMPLAINT AND JURY DEMAND**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Aerielle, Inc., and files this its Amended Complaint and Jury Demand against the above-captioned defendant and in support thereof would respectfully show the Court as follows:

**I. PARTIES**

1. Plaintiff Aerielle, Inc. (“Aerielle”) is a corporation organized under the laws of the state of California, with its principal place of business at 625 Ellis Street, Suite 206, Mountain View, CA 94043. Aerielle, Inc., is a consumer electronics designer whose products include wireless accessories for portable mobile audio devices such as I-Pod, MP3/4 players, and related products.

2. Defendant Monster Cable Products, Inc. (“Monster Cable”), is a corporation formed under the laws of the state of California, with its principal place of business at 455 Valley Drive, Brisbane, California 94005.

**II. JURISDICTION AND VENUE**

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

4. Subject matter jurisdiction is proper in this Court under 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over Monster Cable because, among other things, Monster Cable regularly does business in this judicial district and because Monster Cable has established minimum contacts with the forum and the exercise of jurisdiction over Monster Cable will not offend traditional notions of fair play and substantial justice. On information and belief, Monster Cable designs, manufactures and places infringing products into the stream of commerce with the reasonable expectation and/or knowledge that the actual or potential ultimate purchasers and users are located throughout the United States, including within this judicial district. On information and belief, Monster Cable has voluntarily conducted business and solicited customers in the State of Texas, including in this judicial district. On information and belief, Monster Cable sells, advertises, markets and distributes infringing products throughout this judicial district. Monster Cable has committed and continues to commit acts of patent infringement in this judicial district.

6. Venue is proper in this judicial district under 28 U.S.C. § 1391(b), (c) and 1400(b) because Monster Cable is subject to personal jurisdiction in the Eastern District of Texas as discussed in the preceding paragraph.

### **III. THE PATENTS-IN-SUIT**

7. Monster Cable has infringed and continues to infringe at least two Aerielle patents. United States Patent No. 6,671,494 (“the ‘494 Patent”), entitled “Small, Battery Operated RF Transmitter for Portable Audio Devices for Use with Headphones With RF Receiver,” was duly and legally issued by the United States Patent and Trademark Office to John James on December 30, 2003. A copy of the ‘494 Patent is attached hereto as Exhibit A. United States Patent No. 5,771,441 (“the

'441 Patent"), entitled "Small, Battery Operated RF Transmitter for Portable Audio Devices for Use With Headphones With RF Receiver," was duly and legally issued by the United States Patent and Trademark Office to John E. Alstatt on June 23, 1998. A copy of the '441 Patent is attached hereto as Exhibit B. The claims of infringement against Monster on the '494 Patent and '441 Patent are asserted in the alternative to the extent they conflict.

8. The '441 Patent and the '494 Patent have been assigned to Aerielle who is their current owner with full rights to sue and recover damages and otherwise enforce the '441 Patent and the '494 Patent.

9. The '441 Patent and the '494 Patent are valid and enforceable.

#### **COUNT 1 - INFRINGEMENT OF '494 PATENT**

10. Monster Cable has infringed, and is still infringing, literally and/or under the doctrine of equivalents, one or more claims of the '494 Patent in at least this State and District by making, using, offering to sell, selling, and/or importing products that infringe one or more of the claims of the '494 Patent. These products include, but are not limited to the following Monster Cable devices: Monster RadioPlay 100, Monster RadioPlay 200, Monster RadioPlay 300, Monster iCarPlay Wireless for iPod, Monster iCarPlay Wireless Plus for iPod, and Monster iCarPlay Wireless Plus for iPod Shuffle.

11. Monster Cable has also contributed to and/or induced, and continues to contribute to and/or induce, the infringement of one or more claims of the '494 Patent, in at least this State and District.

12. On information and belief, Monster Cable's infringement of one or more claims of the '494 Patent has taken place, with full knowledge of the '494 Patent and has been, and continues to be, willful, deliberate, and intentional.

13. Monster Cable's infringement of one or more claims of the '494 Patent has injured Aerielle, and Aerielle is entitled to recover damages adequate to compensate it for Monster Cable's infringement, which in no event can be less than a reasonable royalty.

14. Monster Cable has caused Aerielle substantial damage and irreparable injury by its infringement of one or more claims of the '494 Patent, and Aerielle will continue to suffer damage and irreparable injury unless and until the infringement of Monster Cable is enjoined by this Court.

#### **COUNT 2 – INFRINGEMENT OF '441 PATENT**

15. Monster Cable has infringed, and is still infringing, literally and/or under the doctrine of equivalents, one or more claims of the '441 Patent in at least this State and District by making, using, offering to sell, selling, and/or importing products that infringe one or more of the claims of the '441 Patent. These products include, but are not limited to the following Monster Cable devices: Monster RadioPlay 100, Monster RadioPlay 200, Monster RadioPlay 300, Monster iCarPlay Wireless for iPod, Monster iCarPlay Wireless Plus for iPod, and Monster iCarPlay Wireless Plus for iPod Shuffle.

16. Monster Cable has also contributed to and/or induced, and continues to contribute to and/or induce, the infringement of one or more claims of the '441 Patent, in at least this State and District.

17. On information and belief, Monster Cable's infringement of one or more claims of the '441 Patent has taken place, with full knowledge of the '441 Patent and has been, and continues to be, willful, deliberate, and intentional.

18. Monster Cable's infringement of one or more claims of the '441 Patent has injured Aerielle, and Aerielle is entitled to recover damages adequate to compensate it for Monster Cable's infringement, which in no event can be less than a reasonable royalty.

19. Monster Cable has caused Aerielle substantial damage and irreparable injury by its infringement of one or more claims of the '441 Patent, and Aerielle will continue to suffer damage and irreparable injury unless and until the infringement of Monster Cable is enjoined by this Court.

#### **IV. PRAYER**

20. WHEREFORE, Plaintiff Aerielle respectfully requests that:

- A. Defendant Monster Cable be summoned to appear and answer;
- B. Plaintiff be granted judgment against Defendant;
- C. The Court enter a judgment that Monster Cable has infringed, contributorily infringed, and/or induced the infringement of the '494 Patent and the '441 Patent, and continues to infringe, contribute to the infringement of, and/or induce the infringement of the '494 Patent and the '441 Patent;
- D. The Court enter a judgment that Monster Cable's infringement of the '494 Patent and the '441 Patent was willful and continues to be willful;
- E. The Court enter permanent injunction enjoining Monster Cable, its officers, directors, servants, consultants, managers, employees, agents, attorneys, successors, assigns, affiliates, subsidiaries, and all persons in active concert or participation with any of them, from infringement, contributory infringement, and inducement of infringement of the '494 Patent and the '441 Patent, including but not limited to making, using, offering to sell, selling, or importing any products that infringe, literally or under the doctrine of equivalents, the '494 Patent and the '441 Patent;

- F. The Court enter an award to Aerielle of all damages adequate to compensate Aerielle for Monster Cable's infringement, contributory infringement, and/or inducement of infringement, such damages to be determined by a jury and, if necessary, an accounting of all damages;
- G. The Court award pre-judgment and post-judgment interest as allowed by law;
- H. The Court enter an award of increased damages in an amount not less than three times the amount of damages awarded to Aerielle for Monster Cable's willful infringement of the '494 Patent and the '441 Patent;
- I. The Court enter a declaration that this is an exceptional case under 35 U.S.C. §285 and enter an award of the reasonable attorney's fees, costs, and expenses incurred by Aerielle in this action; and
- J. The Court grant Plaintiff such further relief to which Plaintiff may show itself justly entitled.

#### **V. JURY DEMAND**

Aerielle hereby demands a trial by jury on all issues and claims so triable.

Respectfully submitted,

**TAYLOR, DUNHAM & BURGESS, L.L.P.**

301 Congress Ave., Suite 1050

Austin, Texas 78701

(512) 473-2257 Telephone

(512) 478-4409 Facsimile

By: /s/ David E. Dunham

David E. Dunham

State Bar No. 06227700

Miguel S. Rodriguez

State Bar No. 24007938

Michael C. Smith

State Bar No. 18650410

**THE ROTH LAW FIRM**

115 N. Wellington, Suite 200  
Marshall, Texas 75670  
(909) 935-1665 Telephone  
(909) 935-1797 Facsimile

**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

The undersigned certifies that on this 10<sup>th</sup> day of November, 2006, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document through the Court's CM/ECF system under Local Rule CV-5(a)(3). Any other counsel of record will be served by a facsimile transmission and/or first class mail.

/s/ David E. Dunham