

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

BLUE SPIKE LLC;
BLUE SPIKE INTERNATIONAL LTD;
WISTARIA TRADING LTD,

Plaintiffs.

v.

WARNER MUSIC GROUP CORP.;
ATLANTIC RECORDING
CORPORATION;
WARNER-ELEKTRA-ATLANTIC CORP.;
and WARNER RECORDS, INC.,

Defendants.

Civil Action No. 1:22-cv-7600

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs Blue Spike LLC (“Blue Spike LLC”), Blue Spike International Ltd (“Blue Spike Int.”) and Wistaria Trading Ltd. (“Wistaria”) (collectively, “Blue Spike” or “Plaintiffs”), for its Complaint against Defendants Warner Music Group Corp. (“WMG Corp”), Atlantic Recording Corporation (“Atlantic Recording”), Warner-Elektra-Atlantic Corp. (“WEA”), and Warner Records Inc. (“Warner Records”) (collectively, “WMG” or “Defendants”), alleges the following:

NATURE OF THE ACTION

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

THE PARTIES

2. Plaintiff Blue Spike LLC is a limited liability company organized under the laws of the Texas with a place of business at 1820 Shiloh Road, Suite 1201-C, Tyler, Texas 75703.

3. Plaintiff Blue Spike Int. is a limited liability company established in Ireland with a place of business at Unit 6, Bond House, Bridge Street, Dublin 8. Blue Spike Int. was recently acquired by Blue Spike Inc., a Florida corporation.

4. Plaintiff Wistaria is a Bermuda corporation with a place of business at Clarendon House, 2 Church St., Hamilton HM 11, Bermuda.

5. Upon information and belief, Defendant WMG Corp. is a corporation organized under the laws of the State of Delaware with a place of business at 1633 Broadway, New York, NY 10019. Upon information and belief, WMG Corp. sells, offers to sell, and/or uses products and services throughout the United States, including in this judicial district, and introduces infringing products and services into the stream of commerce knowing that they would be sold and/or used in this judicial district and elsewhere in the United States.

6. Upon information and belief, Defendant Atlantic Recording is a corporation organized under the laws of the State of Delaware with a place of business at 1633 Broadway, New York, NY 10019. Upon information and belief, Atlantic Recording is a subsidiary and record label of WMG Corp. that acts at the direction of WMG Corp. to record and distribute digital content. *See, e.g.*, Form 10-K for Warner Music Group Corp filed 11/22/2022, at 12, *available at* <https://investors.wmg.com/static-files/ac098f77-ade5-4c4d-96f9-a4900b1a17f1> (Nov. 22, 2022); *see also, Id.* at Exhibit 21.1. Upon information and belief, Atlantic Recording sells, offers to sell, and/or uses products and services throughout the United States, including in this judicial district, and introduces infringing products and services into the stream of commerce

knowing that they would be sold and/or used in this judicial district and elsewhere in the United States.

7. On information and belief, Defendant WEA is a corporation organized under the laws of the State of Delaware with a place of business at 1633 Broadway, New York, NY 10019. Upon information and belief, WEA is a subsidiary of WMG Corp. that acts at the direction of WMG Corp. and “markets, distributes and sells music and video products to retailers and wholesale distributors.” Form 10-K for Warner Music Group Corp filed 11/22/2022, at 12, *available at* <https://investors.wmg.com/static-files/ac098f77-ade5-4c4d-96f9-a4900b1a17f1> (Nov. 22, 2022); *see also, Id.* at Exhibit 21.1. Upon information and belief, WEA sells, offers to sell, and/or uses products and services throughout the United States, including in this judicial district, and introduces infringing products and services into the stream of commerce knowing that they would be sold and/or used in this judicial district and elsewhere in the United States.

8. Upon information and belief, Defendant Warner Records is a corporation organized under the laws of the State of Delaware with a place of business at 1633 Broadway, New York, NY 10019. Upon information and belief, Warner Records is a subsidiary and record label of WMG Corp. that acts at the direction of WMG Corp. to record and distribute digital content. *See, e.g.,* Form 10-K for Warner Music Group Corp filed 11/22/2022, at 12, *available at* <https://investors.wmg.com/static-files/ac098f77-ade5-4c4d-96f9-a4900b1a17f1> (Nov. 22, 2022); *see also, Id.* at Exhibit 21.1. Upon information and belief, Warner Records sells, offers to sell, and/or uses products and services throughout the United States, including in this judicial district, and introduces infringing products and services into the stream of commerce knowing that they would be sold and/or used in this judicial district and elsewhere in the United States.

9. On information and belief, Defendants act individually and/or in concert to further the goals of WMG Corp. under the direction and control of WMG Corp.

JURISDICTION AND VENUE

10. This is an action for patent infringement arising under the Patent Laws of the United States, Title 35 of the United States Code.

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

12. Venue is proper in this judicial district under 28 U.S.C. § 1400(b).

13. This Court has personal jurisdiction over WMG under the laws of the State of New York due at least to their substantial business in New York and in this judicial district, directly or through intermediaries, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct and/or deriving substantial revenue from goods and services provided to individuals in the State of New York. Venue is also proper in this district because WMG has a regular and established place of business in this district. For instance, WMG Corp. is headquartered in this judicial district at 1633 Broadway, New York, NY 10019, an address shared by the other defendants. *See, e.g.*, <https://www.wmg.com/culture#contact> (last visited Sept. 1, 2022).

BACKGROUND

The Invention

14. Scott A. Moskowitz is the inventor of U.S. Patent No. 7,664,263 B2 (“the ’263 patent”). A true and correct copy of the ’263 patent is attached as Exhibit A.

15. On February 16, 2010, the ’263 patent was duly and legally issued by the United States Patent and Trademark Office under the title “Method for Combining Transfer Functions with Predetermined Key Creation.”

16. Blue Spike LLC, Blue Spike Int., and Wistaria, collectively, are the owners of all substantial rights, title and interest in and to the '263 patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement of it.

17. Scott A. Moskowitz is the inventor of U.S. Patent No. 8,265,276 ("the '276 patent"). A true and correct copy of the '276 patent is attached as Exhibit B.

18. On September 11, 2012, the '276 patent was duly and legally issued by the United States Patent and Trademark Office under the title "Method for Combining Transfer Functions with Predetermined Key Creation."

19. Blue Spike LLC, Blue Spike Int., and Wistaria, collectively, are the owners of all substantial rights, title and interest in and to the '276 patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement of it.

20. Scott A. Moskowitz and Mike W. Berry are the inventors of U.S. Patent No. 7,813,506 ("the '506 patent"). A true and correct copy of the '506 patent is attached as Exhibit C.

21. On October 12, 2010, the '506 patent was duly and legally issued by the United States Patent and Trademark Office under the title "Systems and Methods for Permitting Open Access to Data Objects and for Securing Data within the Data Objects."

22. Blue Spike LLC, Blue Spike Int., and Wistaria, collectively, are the owners of all substantial rights, title and interest in and to the '506 patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement of it.

23. Scott A. Moskowitz is the inventor of U.S. Patent No. 7,647,502 B2 ("the '502 patent"). A true and correct copy of the '502 patent is attached as Exhibit D.

24. On January 12, 2010, the '502 patent was duly and legally issued by the United States Patent and Trademark Office under the title "Optimization Methods for the Insertion, Protection, and Detection of Digital Watermarks in Digital Data."

25. Blue Spike LLC, Blue Spike Int., and Wistaria, collectively, are the owners of all substantial rights, title and interest in and to the '502 patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement of it.

26. The '263 patent, the '276 patent, '506 patent, and the '502 patent (collectively, "the Asserted Patents") all cover pioneering technologies for rights management and content security.

27. The Asserted Patents resulted from the pioneering efforts of the Inventor Scott Moskowitz (hereinafter "the Inventor") in the area of protection of digital information. These efforts resulted in the development of systems, methods, and devices for data protection memorialized in the mid-2000s. At the time of these pioneering efforts, the most widely implemented technology used to address the difficulty of protecting intellectual property was copy protection. However, the industry widely acknowledged a need for a superior IP protection technology because the cost of developing copy protection technologies was high and did not sufficiently reduce piracy. The Inventor conceived of the inventions claimed in the Asserted Patents as a way to solve at least this need.

28. For example, the Inventor developed systems and methods that protect digital information by identifying and encoding a portion of the format information. Encoded digital information, including the digital sample and the encoded format information, is generated to protect the original digital information. *See, e.g.*, Exhibit A at Abstract; Exhibit B at Abstract.

29. As another example, the Inventor developed methods and systems which combine transfer functions with predetermined key creation and enhance trust in transactions in connection with sophisticated security, scrambling, and encryption technology by, for example, steganographic, encryption, authentication, and/or security means. *See, e.g.*, Exhibit A at 4:63-5:14, 5:24-6:18; Exhibit B at 4:66-5:17, 5:27-6:20; Exhibit C at 2:35-3:56; Exhibit D at 3:16-6:37, 6:42-7:5.

Advantage Over the Prior Art

30. The patented inventions disclosed in the Asserted Patents provide many advantages over the prior art. For example, use of at least some of the patented inventions improves the handling of authentication, verification, and authorization with steganographic protocols to achieve efficient, trusted, secure exchange of digital information relative to prior art methods. *See, e.g.*, Exhibit A at 5:24-6:18, 6:53-7:62; Exhibit B at 5:27-6:20; Exhibit C at 6:4-30.

31. An advantage of at least some of the patented inventions in the Asserted Patents is allowing for rights-holders to allow even unauthorized users to play the information within a digital player, but with a reduced level of quality, allowing those users to upgrade their experience by becoming authorized users. *See e.g.*, Exhibit A at 4:38-54; Exhibit B at 4:43-58.

32. Another advantage of at least some of the patented inventions is the creation of more optimal watermark systems that are increasingly tamper-resistant given the number and breadth of existent digitized sample options that have different frequency and time components. *See, e.g.*, Exhibit C at 6:19-30; Exhibit D at 9:10-15.

33. Yet another advantage of at least some of the patented inventions is that they preserve the quality of underlying content signals while using methods to quantify the quality to

identify and highlight advantageous locations for the insertion of digital watermarks. *See, e.g.*, Exhibit C at 3:31-40, 11:47-63, 14:19-15:10; Exhibit D at 11:62-65.

34. Because of these significant advantages that can be achieved through the use of the patented inventions, the Asserted Patents present significant commercial value for companies like Defendants. Indeed, higher economic value can be attributed to a given content provider because of the security in transferring information between parties by steganographic, encryption, authentication, and/or security means, which increases the security of the transmission of the data/information. Indeed, the technology described and claimed in the Asserted Patents reads on the core security functionality of Defendants' digital security in its digital audio products.

Technological Innovation

35. The patented inventions disclosed in the Asserted Patents resolve technical problems related to protection of digital information—particularly problems related to the utilization of sophisticated security, scrambling, and/or encryption technology by, for example, steganographic, encryption, authentication, and/or security means. For example, as the Asserted Patents explain, prior art methods of copy protection faced a tradeoff between copy protection and signal quality, while the Asserted Patents enable simultaneous optimization of both. *See, e.g.*, Exhibit A at 4:38-54; Exhibit B at 4:43-58; Exhibit C at 6:4-8:29, 14:19-15:10; Exhibit D at 11:62-65.

36. The claims of the Asserted Patents do not merely recite the performance of some well-known business practice from the pre-Internet world along with the requirement to perform it on the Internet. Instead, the claims of the Asserted Patents recite inventive concepts that are deeply rooted in engineering technology and overcome problems specifically arising out of

protecting digital information in a highly distributed environment.

37. In addition, the claims of the Asserted Patents recite inventive concepts that improve the functioning of devices for protecting digital information. By way of example, at least some of the claims increase security of digital information and do so in a way that provides control over the playback of digital information over both authorized and unauthorized devices.

38. Moreover, the claims of the Asserted Patents recite inventive concepts that are not merely routine or conventional use of computer components. Instead, the patented inventions disclosed in the Asserted Patents provide a novel solution to specific problems related to protecting digital information.

39. The patented inventions disclosed in the Asserted Patents do not preempt all the ways of protecting digital information, nor do the Asserted Patents preempt any other well-known or prior art technology.

40. Accordingly, the claims in the Asserted Patents recite a combination of elements sufficient to ensure that the claims in substance and in practice amount to significantly more than a patent-ineligible abstract idea.

Prior Litigation

41. The '263 Patent was previously litigated in the Central District of California in Case No. 2:18-cv-03970, Case No. 2:18-cv-04525, Case No. 2:18-cv-05026, and Case No. 2:19-cv-00748, and in the Eastern District of Texas in Case No. 6:18-cv-00381 and Case No. 6:18-cv-00382.

42. The '276 Patent was previously litigated in the Central District of California in Case No. 2:18-cv-03970, Case No. 2:18-cv-04525, Case No. 2:18-cv-05026, and Case No. 2:19-cv-00748, and in the Eastern District of Texas in Case No. 2:16-cv-00329.

43. The '506 patent was previously litigated in the Central District of California in Case No. 2:19-cv-00748, Case No. 2:118-cv-05391, Case No. 2:18-cv-05396, Case No. 2:18-cv-05026, Case No. 2:18-cv-04525, and Case No. 2:18-cv-03970, in the Northern District of California in Case No. 5:18-cv-03392, in the District of Delaware in Case No. 1:19-cv-00161, Case No. 1:18-cv-01402, and in the Eastern District of Texas in Case No. 6:17-cv-00175, Case No. 6:17-cv-00016, Case No. 6:16-cv-01384, and Case No. 2:16-cv-00329.

44. The '502 patent was previously litigated in the Eastern District of Texas in Case No. 6:17-cv-00016 and Case No. 6:17-cv-00053, and in the Northern District of California in Case No. 5:17-cv-04780 and Case No. 5:18-cv-03392.

CAUSES OF ACTION

Accused Instrumentalities

45. "Accused Instrumentalities" as used herein refers to at least (1) digital content of various formats that include watermarking and/or application of one or more security aspects, and/or (2) computing devices and/or software associated with encoding and/or securing digital content, such encoding and/or securing including watermarking and/or applying one or more security aspects to the digital content. Such computing devices and/or software further, include but are not limited to those used to or distribute such digital content.

46. By way of example, the Accused Instrumentalities include computing devices and/or software that encode and/or distribute digital content in the MQA file format, as described in the accompanying Exhibits: WMG performs a method for protecting a digital signal (claim 1, '263 patent; claim 1, '276 patent); WMG performs a method for distributing accessible digital content (claim 6, '506 patent); and WMG performs a method for encoding at least one watermark in a content signal (claim 1, '502 patent).

47. Evidence of non-limiting examples of infringement include at least the following, as described in the accompanying Exhibits:

- WMG is a leading music producer that creates and owns content signals such as digital audio files.
- WMG owns accessible digital content (e.g., digital audio files or “songs”) that it distributes to various parties, including, for example, music streaming services. *See, e.g.*, “Warner/Chappell Music and Pandora Sign Licensing Agreement,” WARNER MUSIC GROUP, available at <https://www.wmg.com/news/warnerchappell-music-and-pandora-sign-licensing-agreement-21071> (Dec. 15, 2015).
- On information and belief, WMG has agreed to make a portion of its massive catalog of master recordings available in the MQA hi-res audio file format, which defines how the digital signal (i.e., digital audio file) is encoded. *See, e.g.*, Jason Victor Serinus, “Warner Music Group Goes with MQA,” STEREOPHILE, <https://www.stereophile.com/content/warner-music-group-goes-mqa> (May 7, 2016) (“The agreement makes it possible to digitize the entire WMG catalogue in the superior MQA-encoded format of various resolutions, and disseminate the files via download and streaming services.”); *see also*, “Warner Music Group & MQA Enter Long-term Licensing Deal,” MQA, <https://www.mqa.co.uk/newsroom/news/warner-mqa-deal> (May 6, 2016).
- The MQA file format protects the underlying digital signal. *See* Hugh Robjohns, “MQA Time-domain Accuracy & Digital Audio Quality,” <https://www.soundonsound.com/techniques/mqa-time-domain-accuracy-digital-audio-quality> (Aug. 2016).
- Encoding into the MQA file format includes encoding at least one watermark into the content signal because MQA encoding manipulates a content signal by “fold[ing] down” the content signal via a process known as “audio origami.” After this “fold down” process, “[t]o complete the MQA encoding, a reversible lossless digital [i.e.,

comprised of bits] *watermark is embedded all the way through the resulting file.*”

(emphasis added). See Andrew Harrison, “MQA explained: Everything you need to know about high-res audio,” ARSTECHNICA,

<https://arstechnica.com/gadgets/2017/05/mqa-explained-everything-you-need-to-know-about-high-res-audio/4/> (May 2, 2017).

- Additionally and/or alternatively, MQA encoding includes a step incorporating a digital “signature” that is “buried within the audio data” of the content signal being encoded to MQA format. This signature will be examined by any player device capable of playing the resulting MQA file for authentication purposes. Such a signature may be considered a watermark. See Hugh Robjohns, “MQA Time-domain Accuracy & Digital Audio Quality,” <https://www.soundonsound.com/techniques/mqa-time-domain-accuracy-digital-audio-quality> (Aug. 2016).
- See also generally, Bob Stuart, “Provenance and Containers,” BOB TALKS, <https://bobtalks.co.uk/blog/provenance/provenance-and-containers/> (last visited Aug. 30, 2022).

48. Blue Spike reserves the right to supplement, amend or otherwise modify this analysis and/or evidence based on any claim construction or expert reports or discovery.

Notice and Knowledge of the Patents

49. On information and belief, WMG had noted (actual or constructive) and/or knowledge of Blue Spike’s patents and its infringement thereof throughout the damages period.

50. On information and belief, WMG acquired notice and/or knowledge of the Asserted Patents and its infringement thereof as a result of WMG and Blue Spike’s prior business dealings. By way of example, in August 2000, Blue Spike sent WMG (then Warner Bros. Records) a business proposal to incorporate Blue Spike’s patented watermarking technology into WMG’s “Serialization of Pre-Release Products” project. In the course of

conduct of those business dealings, Blue Spike informed WMG of its extensive and growing patent portfolio, including patents related to the Asserted Patents.

51. On information and belief, WMG acquired notice and/or knowledge of the Asserted Patents and its infringement thereof as a result of the participation of Blue Spike's and WMG's mutual attendance at and participation in industry conferences, organizations, and events where Blue Spike's patent portfolio was discussed. By way of example, Blue Spike and WMG were participants in the Secure Digital Music Initiative (SDMI). *See, e.g.*, Secure Digital Music Initiative, "Participant List," available at https://web.archive.org/web/20020924131635/http://www.sdmi.org/participant_list.htm (last updated 18 October 2000) (WMG is listed as an SDMI participant)). In April 2001, Blue Spike revealed to the participants in the SDMI that it owned an extensive patent portfolio related to watermarking and other file security technologies. Blue Spike disclosed to the participants Blue Spike's issued patents and published applications and further indicated that Blue Spike's patent portfolio included additional pending patent applications and that new patent filings were contemplated. The disclosed patents included at least 5,889,868, which is directly related to the '502 patent. Pending applications at that time include applications directly related to the '276 patent, '263 patent, and '506 patent.

52. On information and belief, WMG acquired notice and/or knowledge of the Asserted Patents and its infringement thereof as a result of patent infringement lawsuits against its customers and partners. By way of example, Blue Spike has asserted that streaming services Pandora, Spotify, Tidal, and SoundCloud infringed one or more of the Asserted Patents based on each defendant's handling of digital audio files. *See, e.g., Blue Spike LLC v. Pandora Media, Inc.*, No. 2:18-cv-04525 (C.D. Cal. 2018); *Blue Spike LLC et al. v. Pandora Media, Inc.*, No.

2:19-cv-00748 (C.D. Cal. 2019); *Blue Spike LLC v. Spotify USA Inc. et al.*, No. 2:18-cv-03970 (C.D. Cal. 2018); *Blue Spike LLC v. Aspiro AB*, No. 2:18-cv-05026 (C.D. Cal. 2018); *Blue Spike LLC et al. v. SoundCloud Ltd.*, No. 1:19-cv-00161 (D. Del. 2019). By way of example, Blue Spike implicated watermarking of music at least in an amended complaint of the above-indicated *Pandora* case in 2018 and, on information and belief, Pandora contacted its music suppliers regarding the lawsuit. *See, e.g., Blue Spike LLC v. Pandora Media, Inc.*, Document 35-5, No. 2:18-cv-04525 (C.D. Cal. 2018). Further, in the successor *Pandora* case in 2019, Blue Spike requested discovery from WMG entities. *See, e.g., Blue Spike LLC et al. v. Pandora Media, Inc.*, Document 146, No. 2:19-cv-00748 (C.D. Cal. 2019). Both of these lawsuits against Pandora involved the '263 patent, '276 patent, and '506 patent.

53. Discovery is expected to uncover the extent of WMG's notice and knowledge of the Asserted Patents.

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 7,664,263

54. The allegations set forth in the foregoing paragraphs are incorporated into this First Claim for Relief.

55. On information and belief, WMG Corp., Atlantic Recording, WEA, and Warner Records, individually and/or in concert, have and continue to directly infringe one or more claims of the '263 patent under 35 U.S.C. § 271(a) by selling, offering to sell, making, using, and/or providing and causing to be used, the Accused Instrumentalities. *See, e.g.,* Jason Victor Serinus, "Warner Music Group Goes with MQA," STEREOPHILE, <https://www.stereophile.com/content/warner-music-group-goes-mqa> (May 7, 2016).

56. On information and belief, the Accused Instrumentalities perform a method for protecting a digital signal by creating a predetermined key and manipulating the digital signal

using the predetermined key when performing the MQA encoding process, which necessarily infringes at least claim 1 of the '263 patent.

57. Exemplary infringement analysis showing infringement of claim 1 of the '263 patent is set forth in Exhibit E. This infringement analysis is necessarily preliminary, as it is provided in advance of any discovery provided by WMG with respect to the '263 patent. Blue Spike reserves all rights to amend, supplement and modify this preliminary infringement analysis. Nothing in the attached chart should be construed as any express or implied contention or admission regarding the construction of any term or phrase of the claims of the '263 patent.

58. The Accused Instrumentalities have infringed and continue to infringe claim 1 of the '263 patent during the pendency of the '263 patent.

59. In addition to the notice and knowledge described above, on information and belief, WMG had actual notice and knowledge of the '263 patent at least as early as the date of the filing of this complaint. WMG has induced and continues to induce others to infringe at least claim 1 of the '263 patent under 35 U.S.C. § 271(b) by, among other things, and with specific intent or willful blindness, actively aiding and abetting others' infringement, including but not limited to the infringement of WMG's partners and customers, whose use of the Accused Instrumentalities constitutes direct infringement of at least claims 1 of the '263 patent.

60. WMG's actions that aid and abet the infringement of others such as their partners and customers include at least distributing the Accused Instrumentalities and providing materials and/or services related to the Accused Instrumentalities. On information and belief, WMG has engaged in such actions with specific intent to cause infringement or with willful blindness to the resulting infringement because WMG has had actual knowledge of the '263 patent and that its acts were inducing infringement of the '263 patent.

61. In particular, on information and belief, WMG's acts of inducement include, *inter alia*, partnering with company MQA Limited to infringe the '263 patent by encoding WMG's digital audio files in MQA format. *See, e.g.*, "Warner Music Group & MQA Enter Long-term Licensing Deal," MQA, <https://www.mqa.co.uk/newsroom/news/warner-mqa-deal> (May 6, 2016).

62. On information and belief, since WMG had knowledge of the '263 patent, WMG's infringement has been and continues to be willful.

63. Additionally, because MQA Limited is based in London, UK (*see, e.g.*, <https://www.mqa.co.uk/terms-and-conditions>), on information and belief, WMG Corp., Atlantic Recording, WEA, and Warner Records, individually and/or in concert, have directly infringed and continue to infringe at least claim 1 of the '263 patent literally or under the doctrine of equivalents, by importing into the United States, and/or using, and/or selling, and/or offering for sale in the United States, without authority or license, the Accused Instrumentalities, in violation of 35 U.S.C. § 271(g). As described herein, digital content in MQA format is made using a process including all of the limitations of at least claim 1 of the '263 patent.

64. Discovery is expected to uncover the full extent of WMG's infringement of the '263 patent beyond that already identified herein.

65. Blue Spike has been harmed by the WMG's infringing activities.

COUNT II – INFRINGEMENT OF U.S. PATENT NO. 8,265,276

66. The allegations set forth in the foregoing paragraphs are incorporated into this Second Claim for Relief.

67. On information and belief, WMG Corp., Atlantic Recording, WEA, and Warner Records, individually and/or in concert, have directly infringed one or more claims of the '276

patent under 35 U.S.C. § 271(a) by selling, offering to sell, making, using, and/or providing and causing to be used, the Accused Instrumentalities. *See, e.g.*, Jason Victor Serinus, “Warner Music Group Goes with MQA,” STEREOPHILE, <https://www.stereophile.com/content/warner-music-group-goes-mqa> (May 7, 2016).

68. On information and belief, the Accused Instrumentalities perform a method for protecting a digital signal by creating a predetermined key comprising one or more mask sets, manipulating the digital signal using the predetermined key, and validating the one or more mask sets either before or after manipulating the digital signal, when performing the MQA encoding process, which necessarily infringes at least claim 1 of the ’276 patent.

69. Exemplary infringement analysis showing infringement of claim 1 of the ’276 patent is set forth in Exhibit F. This infringement analysis is necessarily preliminary, as it is provided in advance of any discovery provided by WMG with respect to the ’276 patent. Blue Spike reserves all rights to amend, supplement and modify this preliminary infringement analysis. Nothing in the attached chart should be construed as any express or implied contention or admission regarding the construction of any term or phrase of the claims of the ’276 patent.

70. The Accused Instrumentalities have infringed claim 1 of the ’276 patent during the pendency of the ’276 patent.

71. On information and belief, WMG had notice and knowledge of the ’276 patent as described above. WMG has induced others to infringe at least claim 1 of the ’276 patent under 35 U.S.C. § 271(b) by, among other things, and with specific intent or willful blindness, actively aiding and abetting others’ infringement, including but not limited to the infringement of WMG’s partners and customers, whose use of the Accused Instrumentalities constitutes direct infringement of at least claim 1 of the ’276 patent.

72. WMG's actions that aid and abet the infringement of others such as their partners and customers to infringe include at least distributing the Accused Instrumentalities and providing materials and/or services related to the Accused Instrumentalities. On information and belief, the WMG has engaged in such actions with specific intent to cause infringement or with willful blindness to the resulting infringement because the WMG has had actual knowledge of the '276 patent and that its acts were inducing infringement of the '276 patent since WMG has had knowledge of the '276 patent.

73. In particular, on information and belief, WMG's acts of inducement include, *inter alia*, partnering with company MQA Limited to infringe the '276 patent by encoding WMG's digital audio files in MQA format. *See, e.g.*, "Warner Music Group & MQA Enter Long-term Licensing Deal," MQA, <https://www.mqa.co.uk/newsroom/news/warner-mqa-deal> (May 6, 2016).

74. On information and belief, since WMG had knowledge of the '276 patent, WMG's infringement has been willful.

75. Additionally, because MQA Limited is based in London, UK (*see, e.g.*, <https://www.mqa.co.uk/terms-and-conditions>), on information and belief, WMG Corp., Atlantic Recording, WEA, and Warner Records, individually and/or in concert, have directly infringed at least claim 1 of the '276 patent literally or under the doctrine of equivalents, by importing into the United States, and/or using, and/or selling, and/or offering for sale in the United States, without authority or license, the Accused Instrumentalities, in violation of 35 U.S.C. § 271(g). As described herein, digital content in MQA format is made using a process including all of the limitations of at least claim 1 of the '276 patent.

76. Discovery is expected to uncover the full extent of WMG's infringement of the '276 patent beyond that already identified herein.

77. Blue Spike has been harmed by WMG's infringing activities.

COUNT III – INFRINGEMENT OF U.S. PATENT NO. 7,813,506

78. The allegations set forth in the foregoing paragraphs are incorporated into this Third Claim for Relief.

79. On information and belief, WMG Corp., Atlantic Recording, WEA, and Warner Records, individually and/or in concert, have directly infringed one or more claims of the '506 patent under 35 U.S.C. § 271(a) by selling, offering to sell, making, using, and/or providing and causing to be used Accused Instrumentalities. *See, e.g.*, Jason Victor Serinus, "Warner Music Group Goes with MQA," STEREOPHILE, <https://www.stereophile.com/content/warner-music-group-goes-mqa> (May 7, 2016).

80. On information and belief, the Accused Instrumentalities perform a method for distributing accessible digital content by selecting and applying a scrambling technique to such digital content using a predetermined key resulting in perceptively degraded digital content when performing the MQA encoding process, and distributing such scrambled digital content, which necessarily infringes at least claim 6 of the '506 patent.

81. Exemplary infringement analysis showing infringement of claim 6 of the '506 patent is set forth in Exhibit G. This infringement analysis is necessarily preliminary, as it is provided in advance of any discovery provided by WMG with respect to the '506 patent. Blue Spike reserves all rights to amend, supplement and modify this preliminary infringement analysis. Nothing in the attached chart should be construed as any express or implied contention or admission regarding the construction of any term or phrase of the claims of the '506 patent.

82. The Accused Instrumentalities have infringed claim 6 of the '506 patent during the pendency of the '506 patent.

83. On information and belief, WMG had notice and knowledge of the '506 patent as described above. WMG has induced others to infringe at least claim 6 of the '506 patent under 35 U.S.C. § 271(b) by, among other things, and with specific intent or willful blindness, actively aiding and abetting others' infringement, including but not limited to the infringement of WMG's partners and customers, whose use of the Accused Instrumentalities constitutes direct infringement of at least claim 6 of the '506 patent.

84. WMG's actions that aid and abet the infringement others such as their partners and customers include at least distributing the Accused Instrumentalities and providing materials and/or services related to the Accused Instrumentalities. On information and belief, the WMG has engaged in such actions with specific intent to cause infringement or with willful blindness to the resulting infringement because the WMG has had actual knowledge of the '506 patent and that its acts were inducing infringement of the '506 patent since WMG has had knowledge of the '506 patent.

85. In particular, on information and belief, WMG's acts of inducement include, *inter alia*, partnering with company MQA Limited to infringe the '506 patent by encoding and distributing WMG's digital audio files in MQA format. *See, e.g.*, "Warner Music Group & MQA Enter Long-term Licensing Deal," MQA, <https://www.mqa.co.uk/newsroom/news/warner-mqa-deal> (May 6, 2016).

86. On information and belief, since WMG had knowledge of the '506 patent, WMG's infringement has been willful.

87. Additionally, because MQA Limited is based in London, UK (see, e.g., <https://www.mqa.co.uk/terms-and-conditions>), on information and belief, WMG Corp., Atlantic Recording, WEA, and Warner Records, individually and/or in concert, have directly infringed at least claim 6 of the '506 patent literally or under the doctrine of equivalents, by importing into the United States, and/or using, and/or selling, and/or offering for sale in the United States, without authority or license, the Accused Instrumentalities, in violation of 35 U.S.C. § 271(g). As described herein, digital content in MQA format is made using a process including all of the limitations of at least claim 6 of the '506 patent.

88. Discovery is expected to uncover the full extent of WMG's infringement of the '506 patent beyond that already identified herein.

89. Blue Spike has been harmed by the WMG's infringing activities.

COUNT IV – INFRINGEMENT OF U.S. PATENT NO. 7,647,502

90. The allegations set forth in the foregoing paragraphs are incorporated into this Fourth Claim for Relief.

91. On information and belief, WMG Corp., Atlantic Recording, WEA, and Warner Records, individually and/or in concert, have directly infringed one or more claims of the '502 patent under 35 U.S.C. § 271(a) by selling, offering to sell, making, using, and/or providing and causing to be used the Accused Instrumentalities. *See, e.g.*, Jason Victor Serinus, "Warner Music Group Goes with MQA," STEREOPHILE, <https://www.stereophile.com/content/warner-music-group-goes-mqa> (May 7, 2016).

92. On information and belief, the Accused Instrumentalities perform a method for encoding at least one watermark in a content signal by predetermining a number of bits in the content signal to be encoded based on at least one of a fixed length key and signal characteristics

of the content signal and encoding the watermark in the predetermined bits when performing the MQA encoding process, which necessarily infringes at least claim 1 of the '502 patent.

93. Exemplary infringement analysis showing infringement of claim 1 of the '502 patent is set forth in Exhibit H. This infringement analysis is necessarily preliminary, as it is provided in advance of any discovery provided by WMG with respect to the '502 patent. Blue Spike reserves all rights to amend, supplement and modify this preliminary infringement analysis. Nothing in the attached chart should be construed as any express or implied contention or admission regarding the construction of any term or phrase of the claims of the '502 patent.

94. The Accused Instrumentalities have infringed claim 1 of the '502 patent during the pendency of the '502 patent.

95. On information and belief, WMG had notice and knowledge of the '502 patent as described above. WMG has induced others to infringe at least claim 1 of the '502 patent under 35 U.S.C. § 271(b) by, among other things, and with specific intent or willful blindness, actively aiding and abetting others' infringement, including but not limited to the infringement of WMG's partners and customers, whose use of the Accused Instrumentalities constitutes direct infringement of at least claim 1 of the '502 patent.

96. WMG's actions that aid and abet the infringement of others such as their partners and customers to infringe include at least distributing the Accused Instrumentalities and providing materials and/or services related to the Accused Instrumentalities. On information and belief, the WMG has engaged in such actions with specific intent to cause infringement or with willful blindness to the resulting infringement because the WMG has had actual knowledge of the '502 patent and that its acts were inducing infringement of the '502 patent since WMG has had knowledge of the '502 patent.

97. In particular, on information and belief, WMG's acts of inducement include, *inter alia*, partnering with company MQA Limited to infringe the '506 patent by encoding WMG's digital audio files in MQA format. *See, e.g.*, "Warner Music Group & MQA Enter Long-term Licensing Deal," MQA, <https://www.mqa.co.uk/newsroom/news/warner-mqa-deal> (May 6, 2016).

98. On information and belief, since WMG had knowledge of the '502 patent, WMG's infringement has been willful.

99. Additionally, because MQA Limited is based in London, UK (*see, e.g.*, <https://www.mqa.co.uk/terms-and-conditions>), on information and belief, WMG Corp., Atlantic Recording, WEA, and Warner Records, individually and/or in concert, have directly infringed at least claim 1 of the '502 patent literally or under the doctrine of equivalents, by importing into the United States, and/or using, and/or selling, and/or offering for sale in the United States, without authority or license, the Accused Instrumentalities, in violation of 35 U.S.C. § 271(g). As described herein, digital content in MQA format is made using a process including all of the limitations of at least claim 1 of the '502 patent.

100. Discovery is expected to uncover the full extent of WMG's infringement of the '502 patent beyond that already identified herein.

101. Blue Spike has been harmed by the WMG's infringing activities.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Blue Spike demands a trial by jury on all issues triable as such.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Blue Spike demands judgment for itself and against WMG as follows:

- A. An adjudication that WMG has infringed the patents in suit;
- B. An award of damages to be paid by WMG adequate to compensate Blue Spike for WMG's past infringement of the patents in suit, and any continuing or future infringement through the date such judgment is entered, including interest, costs, expenses and an accounting of all infringing acts including, but not limited to, those acts not presented at trial;
- C. A declaration that this case is exceptional under 35 U.S.C. § 285, and an award of Blue Spike's reasonable attorneys' fees; and
- D. An award to Blue Spike of such further relief at law or in equity as the Court deems just and proper.

Dated: December 13, 2022

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