

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

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CRFD RESEARCH, INC.,	:	C.A. No. _____
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
	:	JURY TRIAL DEMANDED
SPOTIFY USA INC., SPOTIFY LIMITED, SPOTIFY AB, and SPOTIFY TECHNOLOGY S.A.,	:	
	:	
Defendants.	:	
	x	

Complaint for Patent Infringement

Plaintiff CRFD Research, Inc. (“CRFD”) alleges the following for its complaint of patent infringement against Spotify USA Inc. (“Spotify USA”), Spotify Limited, Spotify AB, and Spotify Technology S.A. (“Spotify Technology”) (collectively, “Defendants” or “Spotify”).

Nature of the Action

This is an action for patent infringement of United States Patent No. 7,191,233 (the “’233 Patent”) under the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.*, and seeking damages and injunctive and other relief under 35 U.S.C. § 281, *et seq.*

The Parties

1. Plaintiff CRFD is a Delaware corporation with its principal place of business at 2331 Mill Road, Suite 100, Alexandria, Virginia 22314.

2. On information and belief, Defendant Spotify USA is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 45 W. 18th Street, 7th Floor, New York, New York 10011. Spotify USA has appointed National

Registered Agents, Inc., 160 Greentree Drive, Suite 101, Dover, Delaware 19904 as its agent for service of process.

3. On information and belief, Defendant Spotify Limited is a company organized under the laws of England and Wales with a principal place of business at Golden House, 30 Great Pulteney Street, London W1F 9NN, United Kingdom.

4. On information and belief, Defendant Spotify AB is a corporation organized under the laws of Sweden with a principal place of business at Birger Jarlsgatan 61, 10tr, 113 56 Stockholm, Sweden.

5. On information and belief, Defendant Spotify Technology is a business entity organized under the laws of the Grand Duchy of Luxembourg with a principal place of business at 18, rue de L'Eau, LU-1449 Luxembourg, Luxembourg.

Jurisdiction and Venue

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

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because the action concerns the infringement of United States patents.

8. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(b) because, among other reasons, Defendants have transacted business in the State of Delaware and Defendants have committed and continue to commit acts of patent infringement in Delaware.

9. Upon information and belief, this Court has personal jurisdiction over each Defendant at least because each transacts substantial business in the State of Delaware, directly or through intermediaries, including: (i) at least a portion of the infringements alleged herein, and (ii) regularly doing or soliciting business in Delaware, engaging in other persistent courses of

conduct, maintaining continuous and systematic contacts in Delaware, purposefully availing itself of the privileges of doing business in Delaware, and/or deriving substantial revenue from goods and services provided to individuals in Delaware.

Joinder

10. CRFD's rights to relief are asserted against Defendants jointly, severally, or in the alternative, with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences related to the making, using, importing into the United States, offering for sale, or selling of the same accused product or process; and questions of fact common to all Defendants will arise in this action.

The Patent-In-Suit

11. CRFD is the owner by assignment of the '233 Patent, entitled "System for Automated, Mid-Session, User-Directed, Device-to-Device Session Transfer System," which the United States Patent & Trademark Office duly issued on March 13, 2007. A true and correct copy of the '233 Patent is attached hereto as Exhibit A.

12. The inventions of the '233 Patent are applicable to, among other things, a transfer of an on-going software session from one device to another device.

Defendants' Infringing Products and Methods

13. Spotify provides streaming music services available in 55 markets across the world.¹ Spotify purports to have over 6 million paying subscribers and over 24 million active users in the world.² Spotify provides music streaming products and services to its customers by transferring content onto its customers' devices.

14. Upon information and belief, Defendants make, use, sell, lease, import and offer

¹ *Spotify Fast Facts*, Spotify.com, <https://spotify.box.com/shared/static/8eteff2q4tjzpaagi49m.pdf> (last visited Mar. 5, 2014).

² *See id.*

for sale products that allow users to transfer an on-going software session from one device to another device, including but not limited to their Spotify Connect services and device applications (“Defendants’ Infringing Products”). For example, Defendants’ Spotify Connect product conducts a session with a user’s Spotify-enabled device, including smartphones and tablets, among other devices, and transfers content to a user’s additional Spotify-enabled devices, including smartphones, tablets, and home audio systems, among other devices. Defendants purport that when a user’s Spotify-enabled devices are networked, the music content on one device can be played back on another device. Defendants purport that a user “can now push a button to control music between [his or her] devices. While playing a song, [a user] can switch playback from [his or her] phone to tablet.”³

COUNT I: INFRINGEMENT OF THE ’233 PATENT

15. Plaintiff incorporates paragraphs 1-14 herein by reference as if set forth here in full.

16. Upon information and belief, Defendants have been and are currently directly infringing, literally or under the doctrine of equivalents, one or more claims of the ’233 Patent by making, using, offering to sell, and/or selling within the United States, and/or importing into the United States, without authority, products and services that transfer an on-going software session from one device to another device. Without limitation, and by example only, Defendants directly infringe and continue to directly infringe at least claim 23 of the ’233 Patent by making, selling, using and offering for sale at least the Spotify Connect service and device applications. Additionally, Defendants directly infringe and continue to directly infringe at least claim 1 of the ’233 Patent by making, using, selling, and offering for sale at least the Spotify Connect service

³ *Connect Partner Devices - Solutions*, Spotify.com, <https://support.spotify.com/us/problems/#!/article/Spotify-Connect-Partner-Devices> (last visited Mar. 5, 2014).

and device applications.

17. Defendants also directly infringe one or more claims of the '233 Patent by directing and/or controlling their employees, executives, users, agents, affiliates, suppliers and customers to use the aforementioned products that transfer an on-going software session from one device to another device within the United States.

18. To the extent that any claim is construed to require a system, Defendants also directly infringe one or more claims of the '233 Patent by providing to users software, hardware and/or platforms that transfer an on-going software session from one device to another device, thus putting the aforementioned system into use.

19. By using the methods claimed in the '233 Patent and by making, selling, importing, offering for sale and/or using the aforementioned products that transfer an on-going software session from one device to another device, Defendants have been and are now directly infringing under 35 U.S.C. § 271(a) one or more claims of the '233 Patent, either literally or under the doctrine of equivalents.

20. Upon information and belief, upon knowledge of the '233 Patent (at least since the filing date of this Complaint) Defendants are contributing to the infringement of the '233 Patent by, among other things, knowingly and with intent, actively encouraging their customers, suppliers, agents, users and affiliates to make, use, sell and/or offer for sale at least the Spotify Connect service and device applications, which constitutes infringement of at least claims 1 and 23 of the '233 Patent. For example, to the extent that any claim is construed to require a system, Defendants provide components, including software, hardware and/or platforms, for use in networked systems, which transfer an on-going software session from one device to another device. Defendants know that such products constitute a material part of the inventions of the

'233 Patent, know those products to be especially made or adapted to infringe the '233 Patent, and know that those products are not staple articles or commodities of commerce suitable for substantial non-infringing use.

21. By contributing to their customers', suppliers', agents', users' and affiliates' use of the apparatus and methods claimed in the '233 Patent and their making and/or using the aforementioned streaming content products and/or services, Defendants have been and are now indirectly infringing under 35 U.S.C. § 271(c) one or more claims of the '233 Patent, either literally or under the doctrine of equivalents.

22. Upon information and belief, upon knowledge of the '233 Patent (at least since the filing date of this Complaint), Defendants are inducing infringement of the '233 Patent by, among other things, knowingly and with intent, actively encouraging their customers, suppliers, users, agents and affiliates to make, use, sell and/or offer for sale Defendants' aforementioned products that transfer an on-going software session from one device to another device in a manner that constitutes infringement of one or more claims of the '233 Patent, with the knowledge and specific intent to encourage, direct and facilitate those infringing activities, and knowing that such activities infringe the '233 Patent, including through the creation and dissemination of promotional and marketing materials, instructional materials, product materials and technical materials. For example, Defendants provide users with instructions regarding how to operate the Spotify Connect service and device applications, including how it "lets [a user] push a button to control the music between [his or her] devices. While playing a song, [the user] can switch playback from [his or her] phone to tablet."⁴

23. To the extent that Defendants' users can be considered to put the aforementioned

⁴ *Spotify Connect - Learn More/Guides*, Spotify.com, <https://support.spotify.com/us/learn-more/guides/#!/article/Spotify-Connect> (last visited Mar. 5, 2014).

products that transfer an on-going software session from one device to another device into use (for example, to the extent any claim is construed to require such a system), then Defendants would also be inducing infringement of the '233 Patent by, among other things, knowingly and with intent (at least since the filing date of this Complaint) actively encouraging their users to make and use Defendants' aforementioned products that transfer an on-going software session from one device to another device in a manner that constitutes infringement of one or more claims of the '233 Patent, with the knowledge and specific intent to encourage, direct and facilitate those infringing activities, and knowing that such activities infringe the '233 Patent, including through the creation and dissemination of promotional and marketing materials, instructional materials, product materials and technical materials.

24. By inducing their customers', suppliers', users', agents' and affiliates' use of the apparatus and methods claimed in the '233 Patent and making and/or using at least the Spotify Connect service and device applications, Defendants have been and are now indirectly infringing under 35 U.S.C. § 271(b) at least claims 1 and 23 of the '233 Patent, either literally or under the doctrine of equivalents.

25. As a result of Defendants' unlawful infringement of the '233 Patent, CRFD has suffered and will continue to suffer damage. CRFD is entitled to recover from Defendants the damages adequate to compensate for such infringement, which have yet to be determined.

26. Defendants will continue to infringe the '233 Patent unless and until they are enjoined by this Court.

27. Defendants, by way of their infringing activities, have caused and continue to cause CRFD to suffer damages in an amount to be determined at trial. CRFD has no adequate remedy at law against Defendants' acts of infringement and, unless Defendants are enjoined from

their infringement of the '233 Patent, CRFD will suffer irreparable harm.

PRAYER FOR RELIEF

WHEREFORE, CRFD respectfully requests that this Court enter judgment in its favor as follows:

- A. Holding that Defendants have directly infringed, literally and/or under the doctrine of equivalents, one or more of the claims of the '233 Patent;
- B. Holding that Defendants have indirectly infringed, literally and/or under the doctrine of equivalents, one or more of the claims of the '233 Patent;
- C. Permanently enjoining Defendants and their officers, directors, agents, servants, employees, affiliates, divisions, branches, subsidiaries, parents and all others acting in concert or privity with any of them from infringing, inducing the infringement of, or contributing to the infringement of the '233 Patent;
- D. Permanently enjoining the use of the products that transfer an on-going software session from one device to another device created or used according to the patented methods of the '233 Patent;
- E. Awarding to CRFD the damages to which it is entitled under 35 U.S.C. § 284 for Defendants' past infringement and any continuing or future infringement up until the date Defendants are finally and permanently enjoined from further infringement, including compensatory damages;
- F. Declaring this to be an exceptional case and awarding CRFD's attorneys' fees under 35 U.S.C. § 285;
- G. Awarding CRFD costs and expenses in this action;
- H. Awarding CRFD pre- and post-judgment interest on its damages; and

I. Awarding CRFD such other and further relief in law or in equity as this Court deems just and proper.

JURY DEMAND

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

Dated: March 7, 2014

Respectfully submitted,

FARNAN LLP

/s/ Brian E. Farnan

Brian E. Farnan (Bar No. 4089)

Michael J. Farnan (Bar No. 5165)

919 North Market Street, 12th Floor

Wilmington, DE 19801

(302) 777-0300

bfarnan@farnanlaw.com

mfarnan@farnanlaw.com

Of Counsel:

Mark S. Raskin

Robert Whitman

John Petrsoric

Eric Berger

Mishcon De Reya New York LLP

750 Seventh Ave., 26th Floor

New York, NY 10003

*Attorneys for Plaintiff
CRFD Research, Inc.*