

1 Deepali Brahmhatt
2 dbrahmbhatt@devlinlawfirm.com
3 DEVLIN LAW FIRM LLC
4 1526 Gilpin Avenue
5 Wilmington, DE 19806
6 Telephone: (302) 449-9010
7 Facsimile: (302) 353-4251

8 Attorney for Plaintiff
9 *Blue Spike LLC, et al.*

10
11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 BLUE SPIKE LLC;
14 BLUE SPIKE INTERNATIONAL
15 LTD;
16 WISTARIA TRADING LTD,

17 Plaintiffs.

18 v.

19 UNIVERSAL MUSIC GROUP;
20 UMG MANUFACTURING &
21 LOGISTICS, INC.; and
22 UNIVERSAL MUSIC PUBLISHING,
23 INC. d/b/a UNIVERSAL MUSIC
24 PUBLISHING GROUP

25 Defendants.

Case No. 2:22-cv-06331

**COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

1 Plaintiffs Blue Spike LLC (“Blue Spike LLC”), Blue Spike International Ltd
2 (“Blue Spike Int.”) and Wistaria Trading Ltd. (“Wistaria”) (collectively, “Blue
3 Spike” or “Plaintiffs”), for its Complaint against Defendants Universal Music
4 Group Inc. (“UM Group”), UMG Manufacturing & Logistics, Inc. (“UMG
5 Manufacturing”) and Universal Music Publishing, Inc. d/b/a Universal Music
6 Publishing Group (“UMPG”) (collectively, “UMG” or “Defendants”), alleges the
7 following:

8 **NATURE OF THE ACTION**

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

11 **THE PARTIES**

12 2. Plaintiff Blue Spike LLC is a limited liability company organized
13 under the laws of the Texas with a place of business at 1820 Shiloh Road, Suite
14 1201-C, Tyler, Texas 75703.

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

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

20 5. On information and belief, Defendant UM Group is a corporation
21 organized under the laws of the State of Delaware with a place of business at 2220
22 Colorado Ave., Santa Monica, CA 90404. On information and belief, UM Group
23 sells, offers to sell, and/or uses products and services throughout the United States,
24 including in this judicial district, and introduces infringing products and services
25 into the stream of commerce knowing that they would be sold and/or used in this
26 judicial district and elsewhere in the United States.

27 6. On information and belief, Defendant UMG Manufacturing is a

1 corporation organized under the laws of the State of California with a place of
2 business at 2220 Colorado Ave., Santa Monica, CA 90404. On information and
3 belief, UMG Manufacturing sells, offers to sell, and/or uses products and services
4 throughout the United States, including in this judicial district, and introduces
5 infringing products and services into the stream of commerce knowing that they
6 would be sold and/or used in this judicial district and elsewhere in the United
7 States.

8 7. On information and belief, Defendant UMPG is a corporation
9 organized under the laws of the State of California with a place of business at 2100
10 Colorado Ave., Santa Monica, CA 90404. On information and belief, UMPG sells,
11 offers to sell, and/or uses products and services throughout the United States,
12 including in this judicial district, and introduces infringing products and services
13 into the stream of commerce knowing that they would be sold and/or used in this
14 judicial district and elsewhere in the United States.

15 **JURISDICTION AND VENUE**

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

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

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

21 11. This Court has personal jurisdiction over UMG under the laws of the
22 State of California due at least to their substantial business in California and in this
23 judicial district, directly or through intermediaries, including: (i) at least a portion
24 of the infringements alleged herein; and (ii) regularly doing or soliciting business,
25 engaging in other persistent courses of conduct and/or deriving substantial revenue
26 from goods and services provided to individuals in the State of California.

27

BACKGROUND

The Invention

12. 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.

13. 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.”

14. Blue Spike is the assignee and owner of the right, 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.

15. 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.

16. 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.”

17. Blue Spike is the assignee and owner of the right, 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.

18. 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.

19. 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.”

20. Blue Spike is the assignee and owner of the right, title and interest in

1 and to the '506 patent, including the right to assert all causes of action arising
2 under said patent and the right to any remedies for infringement of it.

3 21. Scott A. Moskowitz is the inventor of U.S. Patent No. 7,647,502 B2
4 (“the '502 patent”). A true and correct copy of the '502 patent is attached as
5 Exhibit D.

6 22. On January 12, 2010, the '502 patent was duly and legally issued by
7 the United States Patent and Trademark Office under the title “Optimization
8 Methods for the Insertion, Protection, and Detection of Digital Watermarks in
9 Digital Data.”

10 23. Blue Spike is the assignee and owner of the right, title and interest in
11 and to the '502 patent, including the right to assert all causes of action arising
12 under said patent and the right to any remedies for infringement of it.

13 24. The '263 patent, the '276 patent, '506 patent, and the '502 patent
14 (collectively, “the Asserted Patents”) all cover pioneering technologies for rights
15 management and content security.

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

26 26. For example, the Inventor developed systems and methods that protect
27 digital information by identifying and encoding a portion of the format

1 information. Encoded digital information, including the digital sample and the
2 encoded format information, is generated to protect the original digital
3 information. *See, e.g.*, Exhibit A at Abstract; Exhibit B at Abstract.

4 27. As another example, the Inventor developed methods and systems
5 which combine transfer functions with predetermined key creation and enhance
6 trust in transactions in connection with sophisticated security, scrambling, and
7 encryption technology by, for example, steganographic, encryption, authentication,
8 and/or security means. *See, e.g.*, Exhibit A at 4:63-5:14, 5:24-6:18; Exhibit B at
9 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.

10 **Advantage Over the Prior Art**

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

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

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

27 31. Yet another advantage of at least some of the patented inventions is

1 that they preserve the quality of underlying content signals while using methods to
2 quantify the quality to identify and highlight advantageous locations for the
3 insertion of digital watermarks. *See, e.g.*, Exhibit C at 3:31-40, 11:47-63, 14:19-
4 15:10; Exhibit D at 11:62-65.

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

14 **Technological Innovation**

15 33. The patented inventions disclosed in the Asserted Patents resolve
16 technical problems related to protection of digital information—particularly
17 problems related to the utilization of sophisticated security, scrambling, and/or
18 encryption technology by, for example, steganographic, encryption, authentication,
19 and/or security means. For example, as the Asserted Patents explain, prior art
20 methods of copy protection faced a tradeoff between copy protection and signal
21 quality, while the Asserted Patents enable simultaneous optimization of both. *See,*
22 *e.g.*, Exhibit A at 4:38-54; Exhibit B at 4:43-58; Exhibit C at 6:4-8:29, 14:19-
23 15:10; Exhibit D at 11:62-65.

24 34. The claims of the Asserted Patents do not merely recite the
25 performance of some well-known business practice from the pre-Internet world
26 along with the requirement to perform it on the Internet. Instead, the claims of the
27 Asserted Patents recite inventive concepts that are deeply rooted in engineering

1 technology and overcome problems specifically arising out of protecting digital
2 information in a highly distributed environment.

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

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

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

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

18 **Prior Litigation**

19 39. The '263 Patent was previously litigated in the Central District of
20 California in Case No. 2:18-cv-03970, Case No. 2:18-cv-04525, Case No. 2:18-cv-
21 05026, and Case No. 2:19-cv-00748, and in the Eastern District of Texas in Case
22 No. 6:18-cv-00381 and Case No. 6:18-cv-00382.

23 40. The '276 Patent was previously litigated in the Central District of
24 California in Case No. 2:18-cv-03970, Case No. 2:18-cv-04525, Case No. 2:18-cv-
25 05026, and Case No. 2:19-cv-00748, and in the Eastern District of Texas in Case
26 No. 2:16-cv-00329.

27 41. The '506 patent was previously litigated in the Central District of

1 California in Case No. 2:19-cv-00748, Case No. 2:118-cv-05391, Case No. 2:18-
2 cv-05396, Case No. 2:18-cv-05026, Case No. 2:18-cv-04525, and Case No. 2:18-
3 cv-03970, in the Northern District of California in Case No. 5:18-cv-03392, in the
4 District of Delaware in Case No. 1:19-cv-00161, Case No. 1:18-cv-01402, and in
5 the Eastern District of Texas in Case No. 6:17-cv-00175, Case No. 6:17-cv-00016,
6 Case No. 6:16-cv-01384, and Case No. 2:16-cv-00329.

7 42. The '502 patent was previously litigated in the Eastern District of
8 Texas in Case No. 6:17-cv-00016 and Case No. 6:17-cv-00053, and in the
9 Northern District of California in Case No. 5:17-cv-04780 and Case No. 5:18-cv-
10 03392.

11 **CAUSES OF ACTION**

12 **Accused Instrumentalities**

13 43. “Accused Instrumentalities” as used herein refers to at least (1) digital
14 content of various formats, and/or (2) computing devices and/or software
15 associated with the same, including but not limited to those used to encode and/or
16 distribute such digital content, which by way of example includes computing
17 devices and/or software that encode digital content in the MQA file format.

18 **Notice and Knowledge of the Patents**

19 44. On information and belief, UMG had notice (actual or constructive)
20 and/or knowledge of Blue Spike’s patents and its infringement thereof throughout
21 the damages period.

22 45. On information and belief, UMG acquired notice and/or knowledge of
23 the Asserted Patents and its infringement thereof as a result of UMG and Blue
24 Spike’s prior business dealings. By way of example, in the years 2001-2003,
25 UMG and Blue Spike entered into and conducted business pursuant to an
26 agreement whereby UMG licensed certain software from Blue Spike. In the course
27 of conduct of those business dealings, Blue Spike informed UMG of its extensive

1 and growing patent portfolio, including patents related to the Asserted Patents.

2 46. On information and belief, UMG acquired notice and/or knowledge of
3 the Asserted Patents and its infringement thereof as a result of the participation of
4 Blue Spike's and UMG's mutual attendance at and participation in industry
5 conferences, organizations, and events where Blue Spike's patent portfolio was
6 discussed. By way of example, Blue Spike and UMG were participants in the
7 Secure Digital Music Initiative (SDMI). *See, e.g.,* Secure Digital Music Initiative,
8 "Participant List," available at
9 [https://web.archive.org/web/20020924131635/http://www.sdmi.org/participant_list](https://web.archive.org/web/20020924131635/http://www.sdmi.org/participant_list.htm)
10 [.htm](https://web.archive.org/web/20020924131635/http://www.sdmi.org/participant_list.htm) (last updated 18 October 2000) (UMG is listed as an SDMI participant)). In
11 April 2001, Blue Spike revealed to the participants in the SDMI that it owned an
12 extensive patent portfolio related to watermarking and other file security
13 technologies.

14 47. On information and belief, UMG acquired notice and/or knowledge of
15 the Asserted Patents and its infringement thereof as a result of patent infringement
16 lawsuits against its customers and partners. By way of example, Blue Spike has
17 asserted that streaming services Pandora, Spotify, Tidal, and SoundCloud infringed
18 one or more of the Asserted Patents based on each defendant's handling of digital
19 audio files, including UMG digital audio files. *See, e.g., Blue Spike LLC v.*
20 *Pandora Media, Inc.*, No. 2:18-cv-04525 (C.D. Cal. 2018); *Blue Spike LLC v.*
21 *Spotify USA Inc. et al.*, No. 2:18-cv-03970 (C.D. Cal. 2018); *Blue Spike LLC v.*
22 *Aspiro AB*, No. 2:18-cv-05026 (C.D. Cal. 2018); *Blue Spike LLC et al. v.*
23 *SoundCloud Ltd.*, No. 1:19-cv-00161 (D. Del. 2019). On information and belief,
24 one or more of UMG's customers or partners named or otherwise implicated in
25
26
27

1 these lawsuits informed UMG of the Asserted Patents and claims of infringement.

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

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

5 49. On information and belief, UMG has and continues to directly
6 infringe one or more claims of the '263 patent under 35 U.S.C. § 271(a) by selling,
7 offering to sell, making, using, and/or providing and causing to be used, the
8 Accused Instrumentalities. *See, e.g.*, Kris Wouk, “Universal Music Group is the
9 latest company to offer music in hi-res MQA format,” DIGITALTRENDS,
10 [https://www.digitaltrends.com/home-theater/mqa-universal-music-group-deal-hi-](https://www.digitaltrends.com/home-theater/mqa-universal-music-group-deal-hi-res-audio/)
11 [res-audio/](https://www.digitaltrends.com/home-theater/mqa-universal-music-group-deal-hi-res-audio/) (Feb. 16, 2017).

12 50. On information and belief, the Accused Instrumentalities perform a
13 method for protecting a digital signal by creating a predetermined key and
14 manipulating the digital signal using the predetermined key when performing the
15 MQA encoding process, which necessarily infringes at least claim 1 of the '263
16 patent.

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

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

26 53. In addition to the notice and knowledge described above, on
27 information and belief, UMG had actual notice and knowledge of the '263 patent

1 at least as early as the date of the filing of this complaint. UMG has induced and
2 continues to induce others to infringe at least claim 1 of the '263 patent under 35
3 U.S.C. § 271(b) by, among other things, and with specific intent or willful
4 blindness, actively aiding and abetting others' infringement, including but not
5 limited to the infringement of UMG's partners and customers, whose use of the
6 Accused Instrumentalities constitutes direct infringement of at least claims 1 of the
7 '263 patent.

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

15 55. In particular, on information and belief, UMG's acts of inducement
16 include, *inter alia*, partnering with company MQA Limited to infringe the '263
17 patent by encoding UMG's digital audio files in MQA format. *See, e.g.,* Andy
18 Gensler, "Universal Music and MQA Announce Hi-Res Streaming Collaboration,"
19 BILLBOARD, [https://www.billboard.com/articles/business/7694109/universal-](https://www.billboard.com/articles/business/7694109/universal-music-and-mqa-announce-hi-res-streaming-collaboration)
20 [music-and-mqa-announce-hi-res-streaming-collaboration](https://www.billboard.com/articles/business/7694109/universal-music-and-mqa-announce-hi-res-streaming-collaboration) (Feb. 16, 2017)).

21 56. On information and belief, since UMG had knowledge of the '263
22 patent, UMG's infringement has been and continues to be willful.

23 57. Blue Spike has been harmed by the UMG's infringing activities.

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

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

27

1 59. On information and belief, UMG has directly infringed one or more
2 claims of the '276 patent under 35 U.S.C. § 271(a) by selling, offering to sell,
3 making, using, and/or providing and causing to be used, the Accused
4 Instrumentalities. *See, e.g.*, Kris Wouk, “Universal Music Group is the latest
5 company to offer music in hi-res MQA format,” DIGITALTRENDS,
6 [https://www.digitaltrends.com/home-theater/mqa-universal-music-group-deal-hi-](https://www.digitaltrends.com/home-theater/mqa-universal-music-group-deal-hi-res-audio/)
7 [res-audio/](https://www.digitaltrends.com/home-theater/mqa-universal-music-group-deal-hi-res-audio/) (Feb. 16, 2017).

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

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

21 62. The Accused Instrumentalities have infringed claim 1 of the '276
22 patent during the pendency of the '276 patent.

23 63. On information and belief, UMG had notice and knowledge of the
24 '276 patent as described above. UMG has induced others to infringe at least claim
25 1 of the '276 patent under 35 U.S.C. § 271(b) by, among other things, and with
26 specific intent or willful blindness, actively aiding and abetting others'
27 infringement, including but not limited to the infringement of UMG's partners and

1 customers, whose use of the Accused Instrumentalities constitutes direct
2 infringement of at least claim 1 of the '276 patent.

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

11 65. In particular, on information and belief, UMG's acts of inducement
12 include, *inter alia*, partnering with company MQA Limited to infringe the '276
13 patent by encoding UMG's digital audio files in MQA format (*see, e.g.*, Andy
14 Gensler, "Universal Music and MQA Announce Hi-Res Streaming Collaboration,"
15 BILLBOARD, [https://www.billboard.com/articles/business/7694109/universal-](https://www.billboard.com/articles/business/7694109/universal-music-and-mqa-announce-hi-res-streaming-collaboration)
16 [music-and-mqa-announce-hi-res-streaming-collaboration](https://www.billboard.com/articles/business/7694109/universal-music-and-mqa-announce-hi-res-streaming-collaboration) (Feb. 16, 2017)).

17 66. On information and belief, since UMG had knowledge of the '276
18 patent, UMG's infringement has been willful.

19 67. Blue Spike has been harmed by UMG's infringing activities.

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

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

23 69. On information and belief, UMG has directly infringed one or more
24 claims of the '506 patent under 35 U.S.C. § 271(a) by selling, offering to sell,
25 making, using, and/or providing and causing to be used Accused Instrumentalities.
26 *See, e.g.*, Kris Wouk, "Universal Music Group is the latest company to offer music
27

1 in hi-res MQA format,” DIGITALTRENDS, [https://www.digitaltrends.com/home-](https://www.digitaltrends.com/home-theater/mqa-universal-music-group-deal-hi-res-audio/)
2 theater/mqa-universal-music-group-deal-hi-res-audio/ (Feb. 16, 2017).

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

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

16 72. The Accused Instrumentalities have infringed claim 6 of the '506
17 patent during the pendency of the '506 patent.

18 73. On information and belief, UMG had notice and knowledge of the
19 '506 patent as described above. UMG has induced others to infringe at least claim
20 6 of the '506 patent under 35 U.S.C. § 271(b) by, among other things, and with
21 specific intent or willful blindness, actively aiding and abetting others'
22 infringement, including but not limited to the infringement of UMG's partners and
23 customers, whose use of the Accused Instrumentalities constitutes direct
24 infringement of at least claim 6 of the '506 patent.

25 74. UMG's actions that aid and abet the infringement others such as their
26 partners and customers include at least distributing the Accused Instrumentalities
27 and providing materials and/or services related to the Accused Instrumentalities.

1 On information and belief, the UMG has engaged in such actions with specific
2 intent to cause infringement or with willful blindness to the resulting infringement
3 because the UMG has had actual knowledge of the '506 patent and that its acts
4 were inducing infringement of the '506 patent since UMG has had knowledge of
5 the '506 patent.

6 75. In particular, on information and belief, UMG's acts of inducement
7 include, *inter alia*, partnering with company MQA Limited to infringe the '506
8 patent by encoding and distributing UMG's digital audio files in MQA format (*see*,
9 *e.g.*, Andy Gensler, "Universal Music and MQA Announce Hi-Res Streaming
10 Collaboration," BILLBOARD,
11 [https://www.billboard.com/articles/business/7694109/universal-music-and-mqa-](https://www.billboard.com/articles/business/7694109/universal-music-and-mqa-announce-hi-res-streaming-collaboration)
12 [announce-hi-res-streaming-collaboration](https://www.billboard.com/articles/business/7694109/universal-music-and-mqa-announce-hi-res-streaming-collaboration) (Feb. 16, 2017)).

13 76. On information and belief, since UMG had knowledge of the '506
14 patent, UMG's infringement has been willful.

15 77. Blue Spike has been harmed by the UMG's infringing activities.

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

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

19 79. On information and belief, UMG has directly infringed one or more
20 claims of the '502 patent under 35 U.S.C. § 271(a) by selling, offering to sell,
21 making, using, and/or providing and causing to be used the Accused
22 Instrumentalities. *See, e.g.*, Kris Wouk, "Universal Music Group is the latest
23 company to offer music in hi-res MQA format," DIGITALTRENDS,
24 [https://www.digitaltrends.com/home-theater/mqa-universal-music-group-deal-hi-](https://www.digitaltrends.com/home-theater/mqa-universal-music-group-deal-hi-res-audio/)
25 [res-audio/](https://www.digitaltrends.com/home-theater/mqa-universal-music-group-deal-hi-res-audio/) (Feb. 16, 2017).

26 80. On information and belief, the Accused Instrumentalities perform a
27 method for encoding at least one watermark in a content signal by predetermining

1 a number of bits in the content signal to be encoded based on at least one of a fixed
2 length key and signal characteristics of the content signal and encoding the
3 watermark in the predetermined bits when performing the MQA encoding process,
4 which necessarily infringes at least claim 1 of the '502 patent.

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

12 82. The Accused Instrumentalities have infringed claim 1 of the '502
13 patent during the pendency of the '502 patent.

14 83. On information and belief, UMG had notice and knowledge of the
15 '502 patent as described above. UMG has induced others to infringe at least claim
16 1 of the '502 patent under 35 U.S.C. § 271(b) by, among other things, and with
17 specific intent or willful blindness, actively aiding and abetting others'
18 infringement, including but not limited to the infringement of UMG's partners and
19 customers, whose use of the Accused Instrumentalities constitutes direct
20 infringement of at least claim 1 of the '502 patent.

21 84. UMG's actions that aid and abet the infringement of others such as
22 their partners and customers to infringe include at least distributing the Accused
23 Instrumentalities and providing materials and/or services related to the Accused
24 Instrumentalities. On information and belief, the UMG has engaged in such
25 actions with specific intent to cause infringement or with willful blindness to the
26 resulting infringement because the UMG has had actual knowledge of the '502
27

1 patent and that its acts were inducing infringement of the '502 patent since UMG
2 has had knowledge of the '502 patent.

3 85. In particular, on information and belief, UMG's acts of inducement
4 include, *inter alia*, partnering with company MQA Limited to infringe the '506
5 patent by encoding UMG's digital audio files in MQA format (*see, e.g.*, Andy
6 Gensler, "Universal Music and MQA Announce Hi-Res Streaming Collaboration,"
7 BILLBOARD, [https://www.billboard.com/articles/business/7694109/universal-](https://www.billboard.com/articles/business/7694109/universal-music-and-mqa-announce-hi-res-streaming-collaboration)
8 [music-and-mqa-announce-hi-res-streaming-collaboration](https://www.billboard.com/articles/business/7694109/universal-music-and-mqa-announce-hi-res-streaming-collaboration) (Feb. 16, 2017)).

9 86. On information and belief, since UMG had knowledge of the '502
10 patent, UMG's infringement has been willful.

11 87. Blue Spike has been harmed by the UMG's infringing activities.

12 **JURY DEMAND**

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

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff Blue Spike demands judgment for itself and against
17 UMG as follows:

18 A. An adjudication that UMG has infringed the patents in suit;

19 B. An award of damages to be paid by UMG adequate to compensate
20 Blue Spike for UMG's past infringement of the patents in suit, and any continuing
21 or future infringement through the date such judgment is entered, including
22 interest, costs, expenses and an accounting of all infringing acts including, but not
23 limited to, those acts not presented at trial;

24 C. A declaration that this case is exceptional under 35 U.S.C. § 285, and
25 an award of Blue Spike's reasonable attorneys' fees; and

26 D. An award to Blue Spike of such further relief at law or in equity as the
27 Court deems just and proper.

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Dated: September 6, 2022

By: /s/ Deepali Brahmbhatt

Deepali Brahmbhatt
dbrahmbhatt@devlinlawfirm.com

DEVLIN LAW FIRM LLC
1526 Gilpin Avenue
Wilmington, DE 19806
Telephone: (302) 449-9010
Facsimile: (302) 353-4251

Attorney for Plaintiff
Blue Spike LLC, et al.