

1 Jeannine Sano (174190)
jsano@whitecase.com
2 Eric Krause (257925)
ekrause@whitecase.com
3 White & Case LLP
3000 El Camino Real
4 Five Palo Alto Square, 9th Floor
Palo Alto, CA 94306-2109
5 Telephone: (650) 213-0356
Facsimile: (650) 213-8158

6 Attorneys for Plaintiff
7 GOOGLE INC.

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

11 GOOGLE INC.,
12 Plaintiff,
13 v.
14 PERSONAL AUDIO, LLC,
15 Defendant.

Case No.
**COMPLAINT FOR
DECLARATORY JUDGMENT**
DEMAND FOR JURY TRIAL

WHITE & CASE LLP
ATTORNEYS AT LAW
SILICON VALLEY

17 Plaintiff Google Inc. (“Google”) alleges as following as its Complaint against Defendant
18 Personal Audio, LLC (“PA LLC”):

19 **NATURE OF THE ACTION**

20 1. This is an action for declaratory judgment of non-infringement and invalidity of
21 U.S. Patent No. 6,199,076 (“’076 patent”) and U.S. Patent No. 7,509,178 (“’178 patent”) arising
22 under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02, and the patent laws of the United
23 States, 35 U.S.C. §§ 1, *et seq.* True and correct copies of the ’076 patent and ’178 patent are
24 attached as Exhibits 1 and 2. Both patents expired on October 2, 2016.

25 2. Google requests this relief because PA LLC has alleged in a complaint filed in the
26 Eastern District of Texas that Google infringed certain claims of the ’076 and ’178 patents. *See,*
27 *e.g.,* PA LLC’s Am. Compl. ¶¶ 73, 81 (“Defendant directly infringes the ’076 patent[/’178 patent]”
28

1 by making, using, offering to sell, and selling Google tablets and phones incorporating Google
2 Play Music in violation of 35 U.S.C. § 271(a).”). A true and correct copy of PA LLC’s First
3 Amended Complaint filed in the Eastern District of Texas is attached as Exhibit 3. Google has
4 moved to dismiss PA LLC’s amended complaint for improper venue in view of the Supreme
5 Court’s ruling in *TC Heartland LLC v. Kraft Foods Group Brands LLC*, 137 S. Ct. 1514 (2017).

6 3. An actual and justiciable controversy therefore exists under 28 U.S.C. §§ 2201-02
7 between Google and PA LLC as to whether the accused audio player devices with Google Play
8 Music are licensed, whether Google and Google Play Music infringed the asserted claims of the
9 ’076 and ’178 patents, and whether the asserted claims of the ’076 and ’178 patents are invalid.

10 PARTIES

11 4. Google is a Delaware corporation, headquartered at 1600 Amphitheatre Parkway,
12 Mountain View, California 94043. Google created Google Play Music.

13 5. On information and belief, PA LLC is a limited liability company organized and
14 existing under the laws of the State of Texas, with an office location at 550 Fannin Street, Suite
15 1313, Beaumont, Texas 77701. PA LLC is in the business of licensing patents through litigation
16 and has one employee, Brad Liddle, Plaintiff’s CEO and General Counsel. PA LLC does not
17 make or sell any products.

18 JURISDICTION AND VENUE

19 6. Google files this complaint against PA LLC pursuant to the patent laws of the
20 United States, Title 35 of the United States Code, with a specific remedy sought based upon the
21 laws authorizing actions for declaratory judgment in the federal courts of the United States, 28
22 U.S.C. §§ 2201 and 2202, and under the patent laws of the United States, 35 U.S.C. §§ 1-390.

23 7. This Court has subject matter jurisdiction over this action, which arises under the
24 patent laws of the United States, pursuant to 28 U.S.C. §§ 1331, 1338(a), and 2201(a).

25 8. This Court has personal jurisdiction over PA LLC, which has taken specific
26 actions in California, including in the Northern District of California. On information and belief,
27 PA LLC has purposefully availed itself of the privileges and protections of this District by
28 systematically pursuing patent enforcement activities and negotiating and entering into license

1 agreements with entities and individuals residing in California and in this District, including the
2 '076 and '178 patents, with sufficient contacts with California and this District to be subject to
3 personal jurisdiction in this District.

4 9. Specifically, on information and belief, PA LLC has contacted and negotiated with
5 numerous entities or individuals located in this District between 2009 and 2017, including Google
6 in Mountain View, California, with demands to obtain patent licenses to the '076 and '178
7 patents. On information and belief, PA LLC has settled patent infringement actions involving the
8 asserted patents and thereby licensed, or effectively licensed, at least Acer, Apple, Inc.,
9 ASUSTek, Fuhu, Fujitsu, Huawei, Microsoft, Motorola Mobility, Inc. (formerly a subsidiary of
10 Google Inc.), and Samsung, all of which have offices in the Northern District of California.

11 10. Based on the Supreme Court's decision in *TC Heartland*, the undisputed fact that
12 Google does not reside in the Eastern District of Texas, and PA LLC's admission that it "never
13 pled ... [that Google] has a 'regular and established place of business' in the Eastern District of
14 Texas," see *Personal Audio, LLC v. Google Inc.*, No. 1:15-cv-00350-RC, Opp'n Mot. Dismiss at
15 7, ECF No. 53, this dispute should be resolved in this District, where venue is proper.

16 11. Venue in this District is proper under 28 U.S.C. § 1391(b) because PA LLC is
17 subject to personal jurisdiction in this District, a substantial part of the events giving rise to
18 Google's declaratory judgment claim of non-infringement, such as the development of Google
19 Play Music, occurred in this District. On information and belief, many of Plaintiff's licensing and
20 enforcement activities involving the '076 and '178 patents also occurred in this District.

21 INTRADISTRICT ASSIGNMENT

22 12. Pursuant to Civil L.R. 3-2(c) and 3-5(b), this is an Intellectual Property Action
23 subject to assignment on a district-wide basis.

24 FACTUAL BACKGROUND

25 13. Google has been headquartered in this District since its founding. Google is
26 currently headquartered at 1600 Amphitheatre Parkway, Mountain View, California 94043,
27 located in this District. The majority of the Google engineers who work on Google Play Music
28 are located at Google's headquarters in Mountain View, California or Google's offices in San

1 Bruno, California, also located in this District. The source code and documentation related to
2 Google Play Music is maintained at Google's Mountain View headquarters or Google's offices in
3 San Bruno as well.

4 14. On information and belief, PA LLC is a patent holding company whose sole
5 business is patent monetization, including activities related to licensing as well as other legal and
6 extrajudicial enforcement and/or defense of the validity of its patents.

7 15. Each claim of the '076 and '178 patent is directed to an apparatus (an audio player
8 device) and cannot be infringed solely by a software program.

9 16. In the action filed by PA LLC against Google in the Eastern District of Texas on
10 September 15, 2015, *Personal Audio LLC v. Google Inc.*, Case No. 1:15-cv-00350-RC, PA LLC
11 has asserted claims 1-3, 5, 6, 13-15 of the '076 patent and claims 1-21, 28, 29 of the '178 patent,
12 which include claims that have been deemed unpatentable by the Patent Trial and Appeal Board.

13 17. In its action against Google pending in the Eastern District of Texas, PA LLC
14 identified dozens of device manufacturers that purportedly make, offer for sale, or sell audio
15 player devices in the United States or import audio player devices into the United States, which
16 allegedly include the Google Play Music application, but has only provided specific infringement
17 allegations for three devices: Google Pixel C Tablet, Sony Xperia Z3, and Blu Products Life XL.
18 A true and correct copy of PA LLC's infringement contentions are attached as Exhibit 4.

19 18. PA LLC has licensed, or effectively licensed, the '076 and '178 patents to at least
20 the following companies: Acer, Amazon Digital Services, Apple, Inc., Apollo Brands, Archos,
21 ASUSTek, Azpen Innovation, Barnes & Noble, Inc., BlackBerry (formerly known as Research In
22 Motion), Coby Electronics, Fuhu, Fujitsu, HTC, Huawei, Lenovo, LG, Microsoft, Motorola
23 Mobility, Inc., Samsung, Sirius XM, Toshiba, XM Satellite Radio, and ZTE. *See Summit Data*
24 *Sys., LLC v. EMC Corp.*, Case No. 10-749-GMS (D. Del. Sept. 25, 2014) (rejecting patent
25 plaintiff's contention that given the accused infringer's market size, it would be reasonable to
26 assume infringement in some non-licensed configuration and holding that accused infringer "need
27 not establish an affirmative defense [of license] when Summit's sole theory of infringement was
28 unfounded").

1 19. On information and belief, the Google Pixel C Tablet, Blu Products Life XL, and
2 the Sony Xperia Z3 are products that PA LLC has already licensed.

3 20. No version of Google Play Music directly or indirectly infringes any asserted
4 claim of the '076 patent or the '178 patent.

5 21. Google does not directly or indirectly infringe any asserted claim of the '076
6 patent or the '178 patent.

7 22. No third party infringes any asserted claim of the '076 patent or the '178 patent by
8 installing or using Google Play Music in any accused audio player devices. Google has not
9 caused, directed, requested, or facilitated any infringement and has not had any specific intent to
10 do so. Google Play Music is not designed for use in any combination that would infringe any
11 asserted claim of the '076 patent or the '178 patent. Furthermore, PA LLC has admitted that
12 Google Play Music has substantial uses that do not infringe any asserted claim of the '076 patent
13 or the '178 patent.

14 23. The asserted claims of the '076 patent and the '178 patent, as properly construed,
15 are invalid for failure to meet one or more of the requirements for patentability under 35 U.S.C.
16 §§ 101, 102, 103, and/or 112.

17 **COUNT I:**

18 **DECLARATORY JUDGMENT OF LICENSE**

19 24. Google hereby restates and incorporates by reference the allegations set forth in
20 paragraphs 1 through 23 of this Complaint as though fully repeated and set forth herein.

21 25. PA LLC purports to own all rights, title, and interest by assignment in the '076
22 patent and '178 patent, which have been extensively licensed.

23 26. In its amended complaint filed in the wrong venue, PA LLC has alleged that
24 Google directly and indirectly infringes the '076 patent and the '178 patent. *See, e.g.*, Ex. 3 ¶¶
25 73-74, 81-82.

26 27. An actual and justiciable controversy exists between Google and PA LLC
27 regarding whether any of the accused devices that allegedly contain the Google Play Music
28 application are licensed as a result of PA LLC's patent licenses. A judicial declaration is

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.