

Frank E. Scherkenbach (SBN 142549 / scherkenbach@fr.com)  
Adam J. Kessel (*pro hac vice* application to be filed / kessel@fr.com)  
Proshanto Mukherji (*pro hac vice* application to be filed / mukherji@fr.com)  
Jeffrey Shneidman (*pro hac vice* application to be filed / shneidman@fr.com)  
FISH & RICHARDSON P.C.  
One Marina Park Drive  
Boston, MA 02210  
Telephone: (617) 542-5070  
Facsimile: (617) 542-8906

Michael R. Headley (SBN 220834 / headley@fr.com)  
FISH & RICHARDSON P.C.  
500 Arguello Street, Suite 500  
Redwood City, CA 94063  
Telephone: (650) 839-5070  
Facsimile: (650) 839-5071

Attorneys for Plaintiffs  
BYTEDANCE INC. and TIKTOK INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BYTEDANCE INC. AND TIKTOK INC.,

Plaintiffs

v.

TRILLER, INC.,

Defendant.

Case No. 3:20-cv-7572

**COMPLAINT FOR DECLARATORY  
JUDGMENT OF NON-INFRINGEMENT  
OF U.S. PATENT NO. 9,691,429**

**DEMAND FOR JURY TRIAL**

Plaintiffs ByteDance Inc. (“BDI”) and TikTok Inc. (“TTI”) (collectively, “Plaintiffs”) hereby allege for their Complaint against Defendant Triller, Inc. (“Triller” or “Defendant”) as follows:

### NATURE OF ACTION

1  
2 1. This is an action for a declaratory judgment of non-infringement of U.S. Patent No.  
3 9,691,429 (“the ’429 patent,” attached as Exhibit A). Plaintiffs seek a declaratory judgment that they  
4 do not infringe any claim of the ’429 patent.

5 2. Plaintiffs are technology companies that provide and support a variety of mobile  
6 software applications that enable people around the world to connect with, consume, and create  
7 entertainment content, including via an application called “TikTok.” TikTok is a mobile software  
8 application that millions of Americans, including many in this judicial district, use to create and  
9 share short videos composed of expressive content.

10 3. Defendant Triller operates an app called “Triller” which it characterizes as “an  
11 entertainment platform built for creators.”<sup>1</sup> Defendant Triller has alleged that TikTok infringes the  
12 ’429 patent, and Plaintiffs disagree.

13 4. Specifically, on July 29, 2020, Triller filed a lawsuit against the entities TikTok Inc.  
14 and Bytedance Ltd. in the Western District of Texas (C.A. No. 20-cv-00693) (“the Texas  
15 Litigation”) alleging that those entities “directly and indirectly infringe the [’429] Patent by making,  
16 using, offering for sale, selling, and importing the popular iOS and Android software application  
17 known as ‘TikTok.’” *Id.*, Dkt. No. 1 ¶3. Triller has alleged that the “Accused Products” in that  
18 lawsuit (the “Accused TikTok Products”) are “software products [that] are available for iOS and  
19 Android hand-held or tablet devices and are distributed under the TikTok brand name.” *Id.*, ¶14.  
20 Triller has alleged that “making, using, offering for sale, selling and/or importing the Accused  
21 Products” constitutes patent infringement and violates at least 35 U.S.C. § 271(a), (b), and (c). *Id.*  
22 ¶34 *et seq.* Triller has also alleged that Plaintiffs’ training videos, demonstrations, brochures, and  
23 user guides instruct users of the TikTok apps to infringe the ’429 patent. *Id.* Triller has alleged that  
24 making the Accused TikTok Products (among other acts) infringes at least claims 1, 3, 4, 5, 6, and  
25 7 of the ’429 patent. *Id.*

26  
27 <sup>1</sup> <https://apps.apple.com/us/app/triller-social-video-platform/id994905763> (accessed Oct. 27,  
28 2020).

1           5.       Notwithstanding Triller’s allegations in the Texas Litigation, that district is not a  
2 proper forum for a dispute concerning the Accused TikTok Products. Bytedance Ltd., a defendant  
3 in that case, is a holding company based outside of the United States that does not have employees  
4 or property in Texas. TTI, the other defendant in that case, has no employees or facilities in the State  
5 of Texas and, more specifically, does not have any regular and established place of business in that  
6 forum, and thus is not subject to venue under the Supreme Court’s decision in *TC Heartland LLC*  
7 *v. Kraft Foods Group Brands LLC*, 581 U.S. \_\_\_, 137 S. Ct. 1514 (2017). Plaintiffs thus bring the  
8 instant action in a proper forum—in the state where all of the relevant parties are based, and in the  
9 judicial district where a substantial part of the events or omissions giving rise to Triller’s alleged  
10 infringement claims have occurred and continue to occur.

11           6.       BDI and TTI are the only companies based in the United States responsible for  
12 developing, providing, and supporting the Accused TikTok Products. Triller’s actions and  
13 allegations have created a real and immediate controversy between Triller and Plaintiffs as to  
14 whether the Accused TikTok Products infringe any claim of the ’429 patent. Triller’s lawsuit and  
15 statements that “making” the Accused TikTok Products infringes the ’429 patent demonstrate that  
16 it is highly likely that Defendant Triller will assert infringement against BDI in addition to its  
17 previous allegations against TTI. In the meantime, the cloud of Triller’s allegations, including that  
18 making the Accused TikTok Products infringes the ’429 patent, hangs over BDI.

19           7.       As set forth herein, Plaintiffs do not infringe the ’429 patent. Therefore, an actual  
20 and justiciable controversy exists between the parties as to whether Plaintiffs’ Accused TikTok  
21 Products infringe any claim of the ’429 patent. A judicial declaration is necessary to resolve the real,  
22 immediate, and justiciable controversy concerning these issues and to determine the respective  
23 rights of the parties regarding the ’429 patent. Plaintiffs respectfully seek a judicial determination  
24 that the ’429 patent is not directly or indirectly infringed by Plaintiffs, including by their products  
25 and/or services.

1 **PARTIES**

2 8. Plaintiff BDI is a Delaware corporation having its principal place of business at 250  
3 Bryant Street, Mountain View, California, 94041.

4 9. Plaintiff TTI is a California corporation having its principal place of business at 5800  
5 Bristol Parkway, Culver City, California, 90230.

6 10. On information and belief, and based on its allegations in the Texas Litigation,  
7 Defendant Triller, Inc. is a Delaware corporation having its principal place of business at 2121  
8 Avenue of the Stars, Suite 2320, Los Angeles, California, 90067.

9 11. On information and belief, and based on its allegations in the Texas Litigation, Triller  
10 is the owner of the '429 patent.

11 **JURISDICTION AND VENUE**

12 **Subject Matter Jurisdiction**

13 12. This action arises under the Declaratory Judgment Act, 28 U.S.C. §§2201-2202, and  
14 under the Patent Laws of the United States, 35 U.S.C. §§1 *et seq.*

15 13. This Court has subject matter jurisdiction over the claims alleged in this action  
16 because this Court has jurisdiction over declaratory judgment claims arising under the Patent Laws  
17 pursuant to 28 U.S.C. §§1331, 1338, 2201, and 2202.

18 14. This Court can provide the relief sought in this Declaratory Judgment Complaint  
19 because an actual case and controversy exists between the parties within the scope of this Court's  
20 jurisdiction pursuant to 28 U.S.C. § 2201, at least because Triller has accused the Accused TikTok  
21 Products of infringing its patent, e.g., by suing others (including TTI) for patent infringement  
22 alleging infringement by "making" the Accused TikTok Products.

23 15. Plaintiff BDI makes the Accused TikTok Products that Triller alleges infringe, and  
24 thus, BDI, in addition to TTI, should be the subject of Triller's allegations. Triller has also alleged  
25 that "portions of the Accused [TikTok] Products" are "especially made or adapted for use in  
26 infringement of the '429 Patent, and ... [are] not suitable for substantial non-infringing use." *See*  
27 Texas Litigation Dkt. No. 1 ¶ 36, which implies that TTI and BDI's roles in the development of  
28

those products is an act of contributory infringement. Triller's allegations against TTI and users of the Accused TikTok Products cast a cloud over TTI and BDI's business, causing uncertainty for TTI and BDI, regarding the ongoing provision or use of the Accused TikTok Products.

16. Triller has maintained this charge despite the fact that the Accused TikTok Products (and use thereof) do not in fact infringe, and have not infringed, any claims of the '429 patent. Triller's allegations and actions have created a real, live, immediate, and justiciable case or controversy between Triller and Plaintiffs.

#### Personal Jurisdiction

17. This Court has personal jurisdiction over Triller. Triller's principal place of business is in California. Triller's Terms of Service state that "Triller, Inc.[']s address is at 2121 Avenue of the Stars Suite 2350, Los Angeles, California 90067." See Exhibit B.

18. Triller also lists both Los Angeles and San Francisco among the locations of its worldwide offices on its website, including at <https://www.triller.co/faq/index.html>:



19. Moreover, Triller has purposefully directed its activities toward and engaged in numerous specific contacts within this District, including by soliciting and providing goods and services to people in this District (in the form of Triller's own products, including the Triller app), and by soliciting investment and receiving funding from persons in this District. On information and belief, Triller also has a number of users in this District, including users who post and view videos located in this district, as shown in the exemplary screenshots below.

# 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.