Frank E. Scherkenbach (SBN 142549 / scherkenbach@fr.com)
Adam J. Kessel (*pro hac vice* / kessel@fr.com)
Proshanto Mukherji (*pro hac vice* / mukherji@fr.com)
Jeffrey Shneidman (*pro hac vice* / 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., TIKTOK INC., and TIKTOK PTE. LTD.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

BYTEDANCE INC., TIKTOK INC., AND TIKTOK PTE. LTD.,

Plaintiffs

v.

TRILLER, INC.,

Defendant.

Case No. 4:20-cv-07572-JSW

SECOND AMENDED COMPLAINT FOR

(1) DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF U.S. PATENT NO. 9,691,429

(2) INJUNCTION AGAINST TRILLER TO CEASE INFRINGEMENT OF U.S. PATENT NOS. 9,648,132, 9,992,322, & 9,294,430

(3) DAMAGES FOR PATENT INFRINGEMENT

DEMAND FOR JURY TRIAL

Plaintiffs Bytedance Inc. ("BDI"), TikTok Inc. ("TTI"), and TikTok Pte. Ltd. ("TTPL") (collectively, "Plaintiffs"), with the written consent of Defendant Triller, Inc. ("Triller" or

"Defendant") pursuant to Fed. R. Civ. P. 15(a)(2) (*see* Dkt. No. 52), do hereby bring this Second Amended Complaint against Triller as follows:

NATURE OF ACTION

1. Plaintiffs BDI and TTI bring this action for a declaratory judgment of non-infringement of U.S. Patent No. 9,691,429 ("the '429 patent"). Plaintiffs TTI and TTPL also seek an injunction against Triller and damages for Triller's past and ongoing infringement of U.S. Patent Nos. 9,648,132 ("the '132 patent"), 9,992,322 ("the '322 patent"), and 9,294,430 ("the '430 patent").

2. Plaintiffs BDI and TTI seek a declaratory judgment that they do not infringe any claim of the '429 patent (attached as Exhibit A). Plaintiffs TTI and TTPL also seek remedies in equity and law for Triller's past and ongoing infringement of TikTok's patented intellectual property as set forth below.

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

4. Defendant Triller is the developer, distributor, and operator of an application called "Triller" which it characterizes as "an entertainment platform built for creators."[1] Defendant Triller has alleged that TikTok infringes the '429 patent, which is not correct. To the contrary, it is Triller that improperly is infringing TTPL and TTI intellectual property, including by Triller's past and ongoing infringement of the '132 patent, '322 patent, and '430 patent, which includes acts of infringement in this judicial district.

Triller's Accusations Against TikTok Are Without Merit

5. On July 29, 2020, Triller filed a lawsuit against the entities TikTok Inc. and Bytedance Ltd. in the Western District of Texas (C.A. No. 20-cv-00693) ("the Texas Litigation")

[1] https://apps.apple.com/us/app/triller-social-video-platform/id994905763 (accessed Oct. 27, 2020)

alleging that those entities "directly and indirectly infringe the ['429] Patent by making, using, offering for sale, selling, and importing the popular iOS and Android software application known as 'TikTok.'" Texas Litigation Dkt. No. 1 ¶3. On November 24, 2020, Triller amended its complaint in the Texas Litigation to additionally assert the '429 patent against Bytedance Inc. and TikTok Pte. Ltd. Texas Litigation Dkt. No. 32. Triller has alleged that the "Accused Products" in that lawsuit (the "Accused TikTok Products") are "software products [that] are available for iOS and Android hand-held or tablet devices and are distributed under the TikTok brand name." Texas Litigation Dkt. No. 1 ¶14. Triller has alleged that "making, using, offering for sale, selling and/or importing the Accused Products" constitutes patent infringement and violates at least 35 U.S.C. § 271(a), (b), and (c). *Id.* ¶34 *et seq*. Triller has also alleged that various training videos, demonstrations, brochures, and user guides, which are created by BDI or TTI, instruct users of the TikTok apps to infringe the '429 patent. *Id.* Triller has alleged that making the Accused TikTok Products (among other acts) infringes at least claims 1, 3, 4, 5, 6, and 7 of the '429 patent. *Id.*

6. Notwithstanding Triller's allegations in the Texas Litigation, that district was not a proper forum for a dispute concerning the Accused TikTok Products. Bytedance Ltd., a defendant in that case, is a holding company based outside of the United States that does not have employees or property in Texas. TTI, another defendant in that case, has no employees or facilities in the State of Texas and, more specifically, does not have any regular and established place of business in that forum, and thus is not subject to venue under the Supreme Court's decision in *TC Heartland LLC v. Kraft Foods Group Brands LLC*, 581 U.S. ___ , 137 S. Ct. 1514 (2017). Recognizing that the Western District of Texas was not the proper forum for the Texas Litigation, on July 9, 2021 the Court there ordered the Texas Litigation transferred to the Northern District of California. Texas Litigation Dkt. No. 85. That case has been deemed related to the instant case and assigned case number 4:21-cv-05300-JSW. *See* Dkt. No. 91. On August 4, 2021, this Court ordered a stay of the transferred Texas Litigation pending final resolution of the *Inter Partes* Review of Triller's asserted '429 patent. *Triller, Inc. v. Bytedance Ltd.*, No. 4:21-cv-05300-JSW, Dkt. No. 94 (N.D. Cal. Aug. 4, 2021). BDI and TTI thus bring the instant action seeking declaratory judgment in this, the proper forum—in the state where the relevant parties are based, and in the judicial district where a

substantial part of the events or omissions giving rise to Triller's alleged infringement claims have occurred and continue to occur.

7. BDI and TTI are the only companies based in the United States responsible for developing, providing, and supporting the Accused TikTok Products. Triller's actions and allegations have created a real and immediate controversy between Triller, BDI, and TTI as to whether the Accused TikTok Products infringe any claim of the '429 patent. In the meantime, the cloud of Triller's allegations, including that making the Accused TikTok Products infringes the '429 patent, hangs over BDI and TTI.

8. As set forth herein, BDI and TTI do not infringe and have not infringed the '429 patent. Therefore, an actual and justiciable controversy exists as to whether BDI and TTI's Accused TikTok Products infringe any claim of the '429 patent. A judicial declaration is necessary to resolve the real, immediate, and justiciable controversy concerning these issues and to determine the respective rights of the parties regarding the '429 patent. BDI and TTI respectfully seek a judicial determination that the '429 patent is not directly or indirectly infringed by BDI and TTI, including by their products and/or services.

Triller Infringes TikTok's Patents

9. Contrary to Triller's assertions, it is Triller that is using TikTok's innovative, valuable, and patented functionality. Triller's software application for the iOS operating system and Triller's software application for the Android operating system (collectively, the "Infringing Triller Products") infringe several TikTok patents, including the '132 patent, '322 patent, and '430 patent (collectively, "TikTok Asserted Patents"), which are owned by TTPL and exclusively licensed to TTI in the United States.

10. The claims of the TikTok Asserted Patents, including the asserted claims, when viewed as a whole and as an ordered combination where applicable, do not merely recite well-understood, routine, or conventional technologies or components. Rather, the claimed inventions represent specific, improved techniques to solve technological problems uniquely arising in computer networks that overcome the shortcomings of the prior art and prior existing systems and methods. Indeed, the claimed inventions were not well-known, routine, or conventional at the time

of their invention nearly fifteen years ago. At the time of the patented inventions, transferring data to mobile devices was cumbersome and inefficient, and network data access from mobile devices was in its infancy.

11. In May 2007, which is the latest priority date for the TikTok Asserted Patents, the first prominent and widely-used mobile "smartphone"—the Apple iPhone—had not yet been released, nor had the world's largest music streaming service—Spotify—yet launched. *See* Ex. G ("The WIRED Guide to the iPhone", accessible at https://www.wired.com/story/guide-iphone/ (last accessed August 17, 2021)); Ex. H ("How Spotify Came to Be Worth Billions", accessible at https://www.bbc.com/news/newsbeat-43240886 (last accessed August 17, 2021)). And while mobile devices existed at the time, the common way to load media, such as music or video, onto such a mobile device was to first download the media data onto a personal computer (*e.g.*, using an application such as Apple's iTunes running on an Apple or Windows PC), and then transfer that data onto the mobile device using a wired connection by plugging the mobile device into the personal computer. At the time, digital audio players ("DAPs"), including the then-leading Apple iPod device, operated in this same way. *See* TikTok Asserted '322 patent at 1:50-54, 3:62-67 (describing an implementation of the claimed invention called "MusicStation" and explaining that "[u]nlike DAPs, where music can only be acquired in the home, MusicStation users can discover and acquire new music anywhere; MusicStation does not need a PC, broadband, iTunes or a credit card to work."). Moreover, in the case of mobile phones in the early 2007 time frame, capabilities for establishing connections and transferring large data sets, such as those required for media playback, were underdeveloped and not the intended or foreseeable use of most mobile phones.

12. The cumbersome and inefficient mechanism for downloading and transferring media data to DAPs and mobile phones at the time was necessary because wireless networks (*e.g.*, Wi-Fi) were still in their infancy, and content delivery over cellular networks using the hypertext transfer protocol (HTTP) was not yet prominent. Rather, mobile phones at the time (such as the BlackBerry devices) largely used other communication protocols like Short Message Service (SMS), Multimedia Messaging Service (MMS), or email-based communication methods (*e.g.*, the POP3 or IMAP protocols) to transfer data. *See, e.g.*, Ex. I ("Timeline from 1G to 5G: A Brief History on Cell

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