

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

**STINGRAY MUSIC USA, INC. and
STINGRAY GROUP, INC.**

Plaintiffs,

v.

POST MEDIA SYSTEMS LLC,

Defendant.

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Civil Action No. _____

JURY TRIAL DEMANDED

PLAINTIFFS' ORIGINAL COMPLAINT FOR DECLARATORY JUDGMENT

Pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, Plaintiffs Stingray Music USA, Inc. and Stingray Group, Inc. (“Stingray”) file this Original Complaint seeking a Declaratory Judgment that Stingray has not infringed any patents owned by Defendant Post Media Systems LLC (“Post Media”). Stingray’s Original Complaint for Declaratory Judgment is based on the following:

I. THE PARTIES

1. Stingray Music USA, Inc. is a Delaware corporation with its principal place of business at 2127 Ayrlesley Town Blvd., Suite 202, Charlotte, North Carolina 28273.
2. Stingray Group, Inc. is a Canadian company with its principal place of business at 730 Wellington Street, Montreal, Quebec, Canada H3C 1T4.
3. On information and belief, Post Media is a Texas corporation with its principal place of business at 556 County Road 557, Farmersville, Texas 75442.

II. JURISDICTION AND VENUE

4. Pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, Stingray

seeks a declaratory judgment that Stingray has not infringed any patents owned by Post Media under the Patent Laws of the United States, Title 35 of the United States Code.

5. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a) because Stingray's claims for declaratory relief arise under 35 U.S.C. § 101, *et seq.*

6. This Court has personal jurisdiction over Post Media because: (1) Post Media has availed itself of this jurisdiction by filing multiple lawsuits in this District, including lawsuits in which Post Media has asserted infringement of the very same patents-at-issue in this Complaint for Declaratory Judgment (*see, e.g., Post Media Systems LLC v. Slacker, Inc.*, Case No. 1:17-cv-718-GMS); and (2) Post Media has regular and established contacts with this District, including for example, the hiring of a law firm based in Wilmington, Delaware, which is in this District, to represent Post Media in patent infringement cases involving the very same patents-at-issue in this Complaint for Declaratory Judgment (*see, e.g., Post Media Systems LLC v. Slacker, Inc.*, Case No. 1:17-cv-718-GMS).

7. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and 1400(b).

III. BACKGROUND FACTS

8. On or about June 22, 2020, Stingray's representative, Mr. Lloyd Feldman, received a call and voicemail from Mr. William Nichols on behalf of Post Media. In this voicemail, Mr. Nichols informed Mr. Feldman that Post Media had filed a complaint for patent infringement against an entity called Stingray Group, Inc. in the United States District Court for the Eastern District of Texas.

9. On information and belief, the complaint referenced by Mr. Nichols was filed in Case No. 4:20-cv-431 pending in the Eastern District of Texas. *See Post Media Systems LLC v. Stingray Group, Inc.*, Case No. 4:20-cv-431 (E.D. Tex. May 26, 2020) at Dkt. 1 ("Post Media

Complaint”).

10. The Post Media Complaint names as the defendant “a company existing under the laws of England and Wales” called Stingray Group, Inc. and further identifies this entity as being headquartered in Berlin, Germany. *See* Post Media Complaint at ¶ 3.

11. Stingray Music USA, Inc.’s parent company, Stingray Group, Inc., is not a company that exists under the laws of England and/or Wales and is not headquartered in Berlin, Germany. Similarly, Stingray Music USA, Inc. is not a company that exists under the laws of England and/or Wales and is not headquartered in Berlin, Germany.

12. Instead, as stated above, Stingray Group, Inc. is a Canadian company with its principal place of business at 730 Wellington Street, Montreal, Quebec, Canada H3C 1T4. Additionally, Stingray Music USA, Inc. is a Delaware corporation with its principal place of business at 2127 Ayrley Town Blvd., Suite 202, Charlotte, North Carolina 28273.

13. Nonetheless, the Post Media Complaint accuses the “Stingray music service” of infringing four patents allegedly assigned to Post Media and includes, as exhibits, claim charts that contain screenshots from Stingray’s mobile music application.

14. As a result, there is a definite and concrete dispute, touching the legal relations of parties having adverse legal interests. In particular, the voicemail received from Post Media’s representative, Mr. Nichols, evidences a real and substantial controversy concerning whether Stingray’s music service infringes one or more patents owned by Post Media.

15. Given that there is no legal or factual basis for Post Media to assert that Stingray infringes any patents owned by Post Media, Stingray respectfully files this Original Complaint seeking the following declaratory relief.

COUNT I: DECLARATORY JUDGMENT OF NON-INFRINGEMENT
OF U.S. PATENT NO. 7,069,310

16. Stingray incorporates each of the allegations of paragraphs 1–15 above.

17. On information and belief, Post Media claims to be the assignee and owner of all right, title, and interest in and to U.S. Patent No. 7,069,310 (“the ’310 Patent”), which is titled “System and Method for Creating and Posting Media Lists for Purposes of Subsequent Playback” and is attached hereto as Exhibit 1.

18. The ’310 Patent states that “[t]he present invention relates to the generation, transfer, and posting of media data in a computer network environment,” and “[m]ore particularly, the invention relates to a client computer based system for creating, processing, encoding, and transferring media files for server based storage, posting, distribution, and retrieval.” *See, e.g.*, Ex. 1 at Field of the Invention.

19. Stingray’s music service also does not satisfy each and every element of any of the claims of the ’310 Patent either as a stand-alone system or in combination with computer components or activities from any third-party. Moreover, Stingray has not induced, and does not now induce, infringement of any valid and enforceable claim of the ’310 Patent. As a result, Stingray’s music service does not directly or indirectly infringe any valid and enforceable claim of the ’310 Patent.

20. There is an actual controversy within the jurisdiction of this Court under 28 U.S.C. §§ 2201 and 2202. Based on the foregoing, a justiciable controversy exists between Stingray and Post Media as to whether Stingray’s music service infringes the ’310 Patent. Absent a declaration of non-infringement, Post Media will continue to wrongfully allege that Stingray’s music service infringes the ’310 Patent and thereby cause Stingray irreparable injury and damage. As a result, the controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory

judgment of non-infringement, and such a judicial declaration is necessary and appropriate so that Stingray may ascertain its rights regarding its music service and the '310 Patent.

21. For the above reasons, Stingray is entitled to a judicial determination and declaration that Stingray has not infringed and is not infringing, either directly, indirectly, contributorily, by inducement or otherwise, any valid and enforceable claim of the '310 Patent.

**COUNT II: DECLARATORY JUDGMENT OF NON-INFRINGEMENT
OF U.S. PATENT NO. 7,472,175**

22. Stingray incorporates each of the allegations of paragraphs 1–21 above.

23. On information and belief, Post Media claims to be the assignee and owner of all right, title, and interest in and to U.S. Patent No. 7,472,175 (“the '175 Patent”), which is titled “System for Creating and Posting Media for Sharing on a Communication Network” and is attached hereto as Exhibit 2.

24. The '175 Patent states that “[t]he present invention relates to the generation, transfer, and posting of media data in a computer network environment,” and “[m]ore particularly, the invention relates to a client computer based system for creating, processing, encoding, and transferring media files for server based storage, posting, distribution, and retrieval.” *See, e.g.*, Ex. 2 at Field of the Invention.

25. Stingray’s music service also does not satisfy each and every element of any of the claims of the '175 Patent either as a stand-alone system or in combination with computer components or activities from any third-party. Moreover, Stingray has not induced, and does not now induce, infringement of any valid and enforceable claim of the '175 Patent. As a result, Stingray’s music service does not directly or indirectly infringe any valid and enforceable claim of the '175 Patent.

26. There is an actual controversy within the jurisdiction of this Court under 28 U.S.C.

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