

1 QUINN EMANUEL URQUHART & SULLIVAN, LLP
 2 Frederick A. Lorig (Bar No. 057645)
 3 fredlorig@quinnemanuel.com
 4 Steven M. Anderson (Bar No. 144014)
 5 stevenanderson@quinnemanuel.com
 6 Christopher A. Mathews (Bar No. 144021)
 7 chrismathews@quinnemanuel.com
 8 865 South Figueroa Street, 10th Floor
 9 Los Angeles, California 90017-2543
 10 Telephone: (213) 443-3000
 11 Facsimile: (213) 443-3100

12 Attorneys for Plaintiff
 13 PACKETVIDEO CORPORATION

14 UNITED STATES DISTRICT COURT
 15 SOUTHERN DISTRICT OF CALIFORNIA

16 PACKETVIDEO CORPORATION, a Delaware
 17 corporation,

18 Plaintiff,

19 v.

20 SPOTIFY USA INC., a Delaware corporation,
 21 SPOTIFY LIMITED, a United Kingdom
 22 corporation, and SPOTIFY TECHNOLOGY
 23 SARL, a Luxembourg corporation,

24 Defendants.

CASE NO. '11CV1659 IEG WMc

COMPLAINT FOR PATENT
 INFRINGEMENT

DEMAND FOR JURY TRIAL

25 **COMPLAINT**

26 Plaintiff PacketVideo Corporation ("PacketVideo") for its complaint against Defendants
 27 Spotify USA Inc. ("Spotify USA"); Spotify Limited ("Spotify UK") and Spotify Technology
 28 SARL ("Spotify Lux") (all collectively "Defendants"), hereby demands a jury trial and alleges as
 follows:

1 **Jurisdiction and Venue**

2 1. This Court has jurisdiction over the subject matter of this action under 28 U.S.C.
3 §§ 1331 and 1338(a).

4 2. Venue is established in this judicial district pursuant to 28 U.S.C. §§ 1391(b), (c),
5 (d) and 1400(b). Defendants have committed acts of infringement in this judicial district; and
6 Defendants Spotify UK and Spotify Lux are alien companies.

7 **Nature of the Action**

8 3. This is a civil action for infringement of United States Patent No. 5,636,276 (the
9 "Patent-in-Suit" or "276 Patent"). This action is based upon the Patent Laws of the United States,
10 35 U.S.C. § 100 et seq.

11 **Parties**

12 4. Plaintiff PacketVideo Corporation ("PacketVideo") is a corporation organized
13 under the laws of the state of Delaware, having its principal place of business at 10350 Science
14 Center Drive, San Diego, CA 92121.

15 5. On information and belief, Defendant Spotify USA is incorporated under the laws
16 of the state of Delaware, having its principal place of business at 76 9th Avenue, Suite 1110, 11th
17 Floor, New York, NY 10011. On information and belief, Spotify products accused of
18 infringement in this Complaint are and have been offered for sale, sold, and imported by Spotify
19 USA in this and other judicial districts.

20 6. On information and belief, Defendant Spotify UK is incorporated under the laws of
21 the United Kingdom, having its principal place of business at Golden House, 30 Great Pulteney
22 Street, London W1F 9NN, United Kingdom. On information and belief, Spotify UK
23 manufactures, distributes, and imports the products alleged to infringe herein in this and other
24 judicial districts.

25 7. On information and belief, Defendant Spotify Lux is incorporated under the laws of
26 Luxembourg, having its principal place of business at Avenue Marie-Therese 22, 2132
27 Luxembourg, Luxembourg. On information and belief, Spotify Lux manufactures, distributes, and
28 imports the products alleged to infringe herein in this and other judicial districts.

1 12. Defendants offer a music streaming service called Spotify, found at
2 www.spotify.com. The Spotify service provides streaming of selected music from a range of
3 record labels (e.g., Sony, Warner, Universal, EMI). The Spotify service enables users to access
4 music available through the service. Specifically, the Spotify servers enable users to browse by,
5 for example, artist, album, record label, genre or playlist. The service is presently only available in
6 the United States, and in certain countries of Europe. The system is currently accessible using
7 different computer software operating systems and mobile operating systems.

8 13. On June 3, 1997, the United States Patent and Trademark Office ("USPTO") issued
9 the '276 Patent to Rolf Brugger for his invention entitled "Device for the Distribution of Music in
10 Digital Form." PacketVideo is the exclusive and current owner of all right, title, and interest in
11 and to the '276 Patent, including the right to bring this suit for injunctive relief and damages.

12
13 **COUNT I**

14 **(Patent Infringement Against Spotify USA)**

15 14. Paragraphs 1 through 13 are incorporated by reference as if stated fully herein.

16 15. The '276 Patent is valid and enforceable.

17 16. At least as early as May 11, 2011, when PacketVideo brought the '276 Patent to
18 Defendants' attention, Defendants have had actual knowledge of both PacketVideo's rights in the
19 '276 Patent and the details of Defendants' infringement of the '276 Patent. Nevertheless, Spotify
20 USA has offered for sale, sold, and imported products and/or services configured to infringe the
21 '276 Patent, and instructed and encouraged others to use the '276 Patent in an infringing manner.

22 17. With knowledge of the '276 Patent, and intent to encourage others to perform acts
23 that Spotify USA knew infringed the '276 Patent, Spotify USA has infringed and is currently
24 infringing the '276 Patent by making, using, selling, offering for sale, and/or importing into the
25 United States, without authority, products or services that are covered by one or more claims of
26 the '276 Patent, including claim 1, including but not limited to Defendants' infringing music
27 streaming system and services, including for their Spotify system and service.

28

1 18. With knowledge of the '276 Patent, Spotify USA have contributed to and/or
2 induced, and will continue to contribute to and/or induce the infringement of the '276 Patent by
3 others in this District and elsewhere in the United States, by selling, offering for sale, advertising,
4 leasing, offering to lease, instructing and/or importing into the United States, without authority,
5 with the direct infringement being accomplished by end users of at least the foregoing products
6 and/or services.

7 19. Spotify USA is not licensed or otherwise authorized by PacketVideo to practice,
8 contributorily practice and/or induce third parties to practice the claims of the '276 Patent.

9 20. By reason of Spotify USA's infringing activities, PacketVideo has suffered, and
10 will continue to suffer, substantial damages in an amount to be proven at trial, but in no event less
11 than a reasonable royalty.

12 21. Spotify USA's continuing acts of infringement are irreparably harming and causing
13 damage to PacketVideo, for which PacketVideo has no adequate remedy at law, and will continue
14 to suffer such irreparable injury unless Defendants' continuing acts of infringement are enjoined
15 by the Court. The hardships that would be imposed by an injunction are less than those faced by
16 PacketVideo should an injunction not issue. The public interest would be served by issuance of an
17 injunction.

18 22. Spotify USA's infringement of the '276 Patent has been and continues to be willful
19 and deliberate, justifying a trebling of damages under 35 U.S.C. § 284.

20 23. Spotify USA's infringement of the '276 Patent is exceptional and entitles
21 PacketVideo to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

22 **COUNT II**

23 **(Patent Infringement Against Spotify UK)**

24 24. Paragraphs 1 through 23 are incorporated by reference as if stated fully herein.

25 25. The '276 Patent is valid and enforceable.

26 26. At least as early as May 11, 2011, when PacketVideo brought the '276 Patent to
27 Defendants' attention, Defendants have had actual knowledge of both PacketVideo's rights in the
28 '276 Patent and the details of Defendants' infringement of the '276 Patent. Nevertheless, Spotify

1 UK has distributed and imported products and/or services configured to infringe the '276 Patent,
2 and instructed and encouraged others to use the '276 Patent in an infringing manner.

3 27. With knowledge of the '276 Patent, and intent to encourage others to perform acts
4 that Spotify UK knew infringed the '276 Patent, Spotify UK has infringed and is currently
5 infringing the '276 Patent by making, using, selling, offering for sale, and/or importing into the
6 United States, without authority, products or services that are covered by one or more claims of
7 the '276 Patent, including claim 1, including but not limited to Defendants' infringing music
8 streaming system and services, including their Spotify system and service.

9 28. With knowledge of the '276 Patent, Spotify UK have contributed to and/or induced,
10 and will continue to contribute to and/or induce the infringement of the '276 Patent by others in
11 this District and elsewhere in the United States, by selling, offering for sale, advertising, leasing,
12 offering to lease, instructing and/or importing into the United States, without authority, with the
13 direct infringement being accomplished by end users of at least the foregoing products and/or
14 services.

15 29. Spotify UK is not licensed or otherwise authorized by PacketVideo to practice,
16 contributorily practice and/or induce third parties to practice the claims of the '276 Patent.

17 30. By reason of Spotify UK's infringing activities, PacketVideo has suffered, and will
18 continue to suffer, substantial damages in an amount to be proven at trial, but in no event less than
19 a reasonable royalty.

20 31. Spotify UK's continuing acts of infringement are irreparably harming and causing
21 damage to PacketVideo, for which PacketVideo has no adequate remedy at law, and will continue
22 to suffer such irreparable injury unless Defendants' continuing acts of infringement are enjoined
23 by the Court. The hardships that would be imposed by an injunction are less than those faced by
24 PacketVideo should an injunction not issue. The public interest would be served by issuance of an
25 injunction.

26 32. Spotify UK's infringement of the '276 Patent has been and continues to be willful
27 and deliberate, justifying a trebling of damages under 35 U.S.C. § 284.

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JURY TRIAL DEMANDED

PacketVideo Corporation demands a trial by jury on all issues triable of right by a jury.

DATED: July 27, 2011

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

By: /s/ Chris Mathews

Chris Mathews
Attorneys for Plaintiff
PACKETVIDEO CORPORATION

CIVIL COVER SHEET

JS 44 (Rev. 12/07)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

PACKETVIDEO CORPORATION, a Delaware corporation

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Christopher A. Mathews (SBN 144021)
Quinn Emanuel Urquhart & Sullivan LLP
865 South Figueroa Street, 10th Floor
Los Angeles, CA 90017
(213) 443-3000

DEFENDANTS

SPOTIFY USA INC., a Delaware corporation,
SPOTIFY LIMITED, a United Kingdom corporation,
and SPOTIFY TECHNOLOGY SARL, a Luxembourg corporation,

County of Residence of First Listed Defendant NY/San Diego
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

'11CV1659 IEG WMC

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated <i>or</i> Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated <i>and</i> Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 640 R.R. & Truck	<input checked="" type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 660 Occupational Safety/Health	SOCIAL SECURITY	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	LABOR	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	PERSONAL INJURY	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 720 Labor/Mgmt. Relations & Disclosure Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 740 Railway Labor Act	FEDERAL TAX SUITS	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	PERSONAL PROPERTY	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 371 Truth in Lending	IMMIGRATION		<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 462 Naturalization Application		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 463 Habcas Corpus - Alien Detainee		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS	<input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 441 Voting			
	<input type="checkbox"/> 442 Employment			
	<input type="checkbox"/> 443 Housing/Accommodations			
	<input type="checkbox"/> 444 Welfare			
	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment			
	<input type="checkbox"/> 446 Amer. w/Disabilities - Other			
	<input type="checkbox"/> 440 Other Civil Rights			
	PRISONER PETITIONS			
	<input type="checkbox"/> 510 Motion to Vacate Sentence			
	Habeas Corpus:			
	<input type="checkbox"/> 530 General			
	<input type="checkbox"/> 535 Death Penalty			
	<input type="checkbox"/> 540 Mandamus & other			
	<input type="checkbox"/> 550 Civil Rights			
	<input type="checkbox"/> 555 Prison Condition			

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
35 USC 1 et seq. **35:145 yeb**

Brief description of cause:
Patent infringement.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** _____ CHECK YES only if demanded in complaint: **JURY DEMAND:** Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE July 27, 2011 SIGNATURE OF ATTORNEY OF RECORD /s/ Christopher A. Mathews

FOR OFFICE USE ONLY RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____