HOME TOUR BLOG

Sign up

Telesur Check-List | Public | D

Show menu

New

TELUSQC/ TELUS- FR- Post-roll sample songs, user will get a black screen and error 'La chanson ne peut pas etre jouée.'

Reopened

Classica: raise the height of subtitles on screen

Aster1 unresponsive

Nov 25, 2018

Hurontel2: AudioEngine no playout since Oct 6

in list Closed

ACTIONS

Share

Description

AudioEngine error log:
{quote}
...
2015-10-07 04:20:29: [INPUT_ERROR] asset:265998: INVALID_TRACK ERROR - The track was listed in the playlist, but the file doesn't exist on the system
2015-10-07 04:20:29: [INPUT_ERROR] asset:898710: INVALID_TRACK ERROR - The track was listed in the playlist, but the file doesn't exist on the system
2015-10-07 04:20:29: [INPUT_ERROR] asset:267288: INVALID_TRACK ERROR - The track was listed in the playlist, but the file doesn't exist on the system
2015-10-07 04:20:29: [INFO] [016] Loaded playlist 2015-Sep-29 to fill air time for period [2015-Oct-06 22:51:21.004598/2015-Oct-06 23:59:59.999999].
{quote}

AudioEngine stillpic log:
{quote}
...
2015-10-08 11:21:26,941 INFO [GalaxieStillPicGenerator] - Generating new /data/video_realtime//0161735.tar
2015-10-08 11:21:26,941 ERROR [MediaGenerator] - Could not read Logo file
2015-10-08 11:21:26,942 ERROR [MediaGenerator] - Could not read Ads URL Too many open files
2015-10-08 11:21:26,942 ERROR [MediaGenerator] - High level exception: Too many open files
2015-10-08 11:21:26,943 ERROR [GalaxieStillPicGenerator] - Could not generate fallback for /data/video_realtime//0161735.tar, deleting output file
{quote}

#

Jira Issue Link : https://jira-stage.corp.stingraydigital.com/browse/CUSTTS-552

Activity

EGLA-TRELLO-000632

From: Sebastien Darveau
Date: February 6 2012 4:51pm
Subject: Segmentation Fault after upgrading to MySQL 5.5
List-Archive: http://lists.mysql.com/plusplus/9499
Message-Id: <94A45252BCEEC041BDA29A9B19BA32D9FA4ECD446F@MTLAPPS005.corp.stingraydigital.com>
MIME-Version: 1.0
Content-Type: text/plain; charset="us-ascii"
Content-Transfer-Encoding: quoted-printable

Hello,

I have recently upgraded from MySQL 5.0.77 to 5.5 and a few of my servers w=
here the program runs full time have crashed with a segmentation fault. It=
 takes some days to happen and the multi-threaded program is running optimi=
zed in production environments so I don't have a lot of information and it'=
s hard to debug.

Is there a known incompatibility with newer versions of MySQL?

I've recompiled mysql++ 3.1.0 to link with libmysqlclient.so.18 and also re=
compiled my program. All my threads are using:
mysqlpp::Connection::thread_start();

Interesting fact, MySQL 5.5 does not use a separated libmysqlclient_r.so li=
brary anymore and the problem looks like a thread safety issue. =20

I can see that in all cases, it happened in mysqlpp object's destructor (do=
uble delete?):

Server 1

2012-02-06 05:56:15: [ERROR] Query error: Lost connection to MySQL server d=
uring query
2012-02-06 05:56:16: [ERROR] 1: 0x2b3f35e39a67 <+47550487042663> (/usr/lib=
64/libmysqlclient.so.18)
2012-02-06 05:56:16: [ERROR] 2: 0x2b3f35e39e34 <my_net_read+420> (/usr/lib=
64/libmysqlclient.so.18)
2012-02-06 05:56:16: [ERROR] 3: 0x2b3f35e33d8a <cli_safe_read+42> (/usr/li=
b64/libmysqlclient.so.18)
2012-02-06 05:56:16: [ERROR] 4: 0x2b3f35e344f7 <+47550487020791> (/usr/lib=
64/libmysqlclient.so.18)
2012-02-06 05:56:16: [ERROR] 5: 0x2b3f35e31ce6 <mysql_real_query+38> (/usr=
/lib64/libmysqlclient.so.18)
2012-02-06 05:56:16: [ERROR] 6: 0x2b3f34f6fdab <mysqlpp::Query::use(char c=
onst*, unsigned long)+123> (/usr/lib64/libmysqlpp.so.3)
2012-02-06 05:56:16: [ERROR] 7: 0x9bf238 <vtable for mysqlpp::Query+56> (b=
in/GalaxieAudioEngine)
2012-02-06 05:56:16: [ERROR] 8: 0x563b60 <mysqlpp::Query::~Query()+0> (bin=
/GalaxieAudioEngine)
2012-02-06 05:56:16: [ERROR] End of stack trace.

Server 2

2012-02-04 02:35:25: [ERROR] 1: 0x2b57d6e9754d <mysqlpp::Connection::~Conn=
ection()+45> (/usr/lib64/libmysqlpp.so.3)

Server 3

2012-02-06 06:25:10: [ERROR] 1: 0x2b9634aaf185 <mysqlpp::DBDriver::~DBDriv=
er()+85> (/usr/lib64/libmysqlpp.so.3)

I use CentOS 5.6.

Thanks,
Sebastien Darveau

Execulink: Deploy UbiquiCAST v. 4.3.3

in list Closed

Description

- Download RPM from https://confluence.corp.stingraydigital.com/display/GALBCAST/Ubiquicast+4.3.3
- Transfer file to Execulink 1 and 2
- Coordinate client to upgrade from 4.3.2

Command to update:

{code}
service monit stop
rpm -Uvh --nodeps /path/to/file/filename.rpm
service audioengine start

make sure that the service starts properly (tail audioengine errors.log)

service monit start
{code}

#

Jira Issue Link : https://jira-stage.corp.stingraydigital.com/browse/CUSTTS-2289

Activity

D **deployment57** added this card to Closed
Jan 15, 2019 at 10:59 AM

EGLA-TRELLO-000634

MX1 - Uplink C-MUSIC on Measat 3A

in list IN PROGRESS

Description

Content is ready on the servers:

6 Mbps MPEG 4 High @L4

Server#1 Main : 10.202.47.5/28 || MC: 225.202.47.5:2000
Server#2 BU : 10.202.47.6/28 || MC: 225.202.47.6:2000

Need the following:

(/) Window to deploy -- DONE Programs deployed on both servers.

#

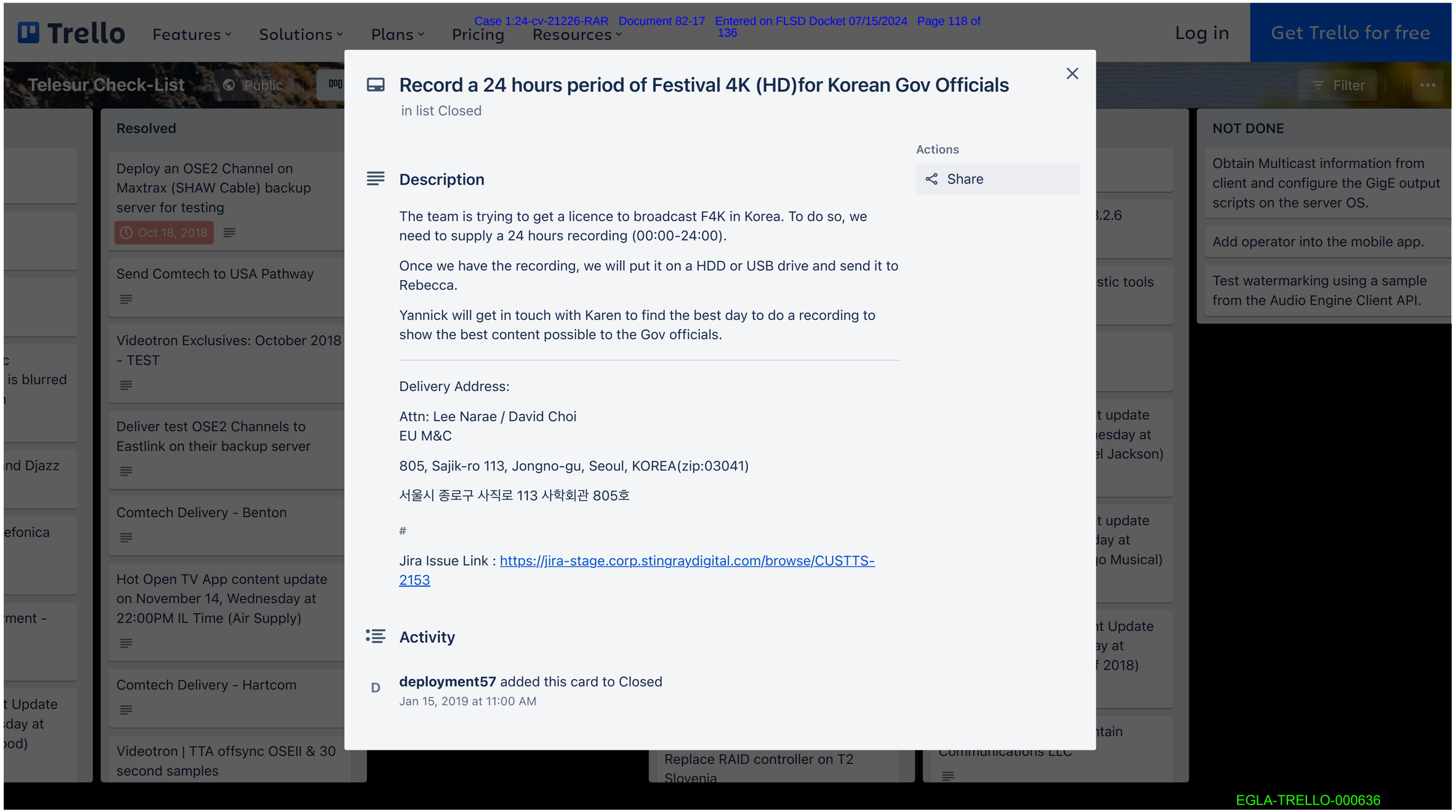
Jira Issue Link : https://jira-stage.corp.stingraydigital.com/browse/CUSTTS-2368

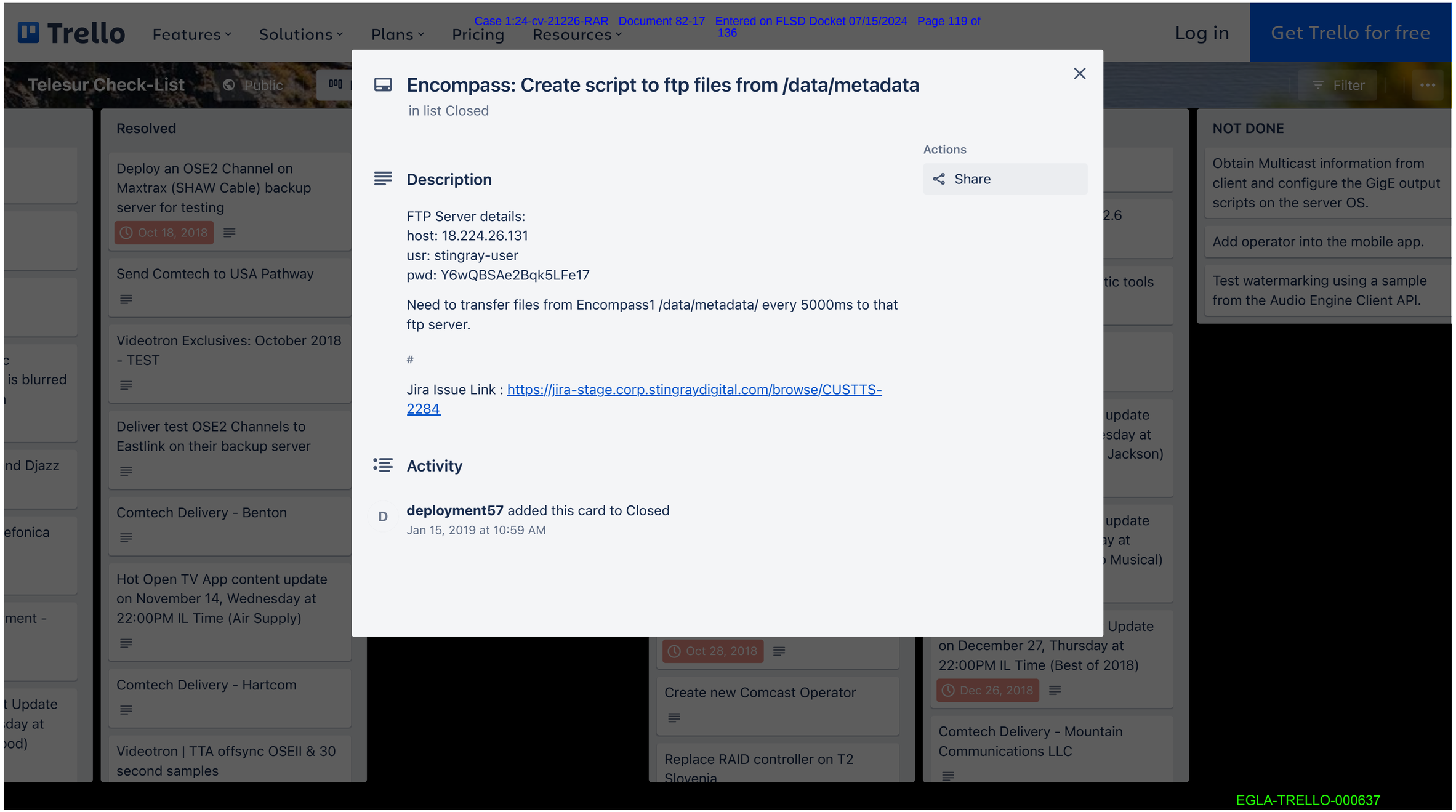
Activity

D **deployment57** added this card to IN PROGRESS
Jan 15, 2019 at 10:58 AM

EGLA-TRELLO-000635

Page 906 of 1912 (IPR2025-00350)
Stingray Group Inc. et al v. Hernandez-Mondragon


Trello
Features
Solutions
Plans
Pricing
Resources
Log in
Get Trello for free
Telesur Check-List
Public
Filter
Resolved
Deploy an OSE2 Channel on Maxtrax (SHAW Cable) backup server for testing
Oct 18, 2018
Send Comtech to USA Pathway
Videotron Exclusives: October 2018 - TEST
Deliver test OSE2 Channels to Eastlink on their backup server
Comtech Delivery - Benton
Hot Open TV App content update on November 14, Wednesday at 22:00PM IL Time (Air Supply)
Comtech Delivery - Hartcom
Videotron | TTA offsync OSEII & 30 second samples
NOT DONE
Obtain Multicast information from client and configure the GigE output scripts on the server OS.
Add operator into the mobile app.
Test watermarking using a sample from the Audio Engine Client API.
Record a 24 hours period of Festival 4K (HD)for Korean Gov Officials
in list Closed
Actions
Share
Description
The team is trying to get a licence to broadcast F4K in Korea. To do so, we need to supply a 24 hours recording (00:00-24:00).
Once we have the recording, we will put it on a HDD or USB drive and send it to Rebecca.
Yannick will get in touch with Karen to find the best day to do a recording to show the best content possible to the Gov officials.
Delivery Address:
Attn: Lee Narae / David Choi
EU M&C
805, Sajik-ro 113, Jongno-gu, Seoul, KOREA(zip:03041)
서울시 종로구 사직로 113 사학회관 805호
#
Jira Issue Link : https://jira-stage.corp.stingraydigital.com/browse/CUSTTS-2153
Activity
deployment57 added this card to Closed
Jan 15, 2019 at 11:00 AM
Replace RAID controller on T2
Slovenia



EGLA-TRELLO-000637

Case 1:24-cv-21226-RAR Document 82-17 Entered on FLSD Docket 07/15/2024 Page 120 of 136

Ubiquicast Control Site - Itération 4 : supporter les mises à jour la nuit

in list ON HOLD

Description

- Ubi Software update
  - Ubi GalaxieSettings.xml update
  - Programmer les deux updates ci-dessus
  - Faire des installations en séquence (faire backup en premier, ensuite si ça marche, faire le primary)
  - Modifier les GalaxieSettings.xml dans le Control Site (en gros bloc de texte) + valider avec le XSD
  - Gestion des versions des .xml
  - Utilisation de monit pour logger des erreurs d'installation
  - Garder un copie des ancienne version et config installe
    #

    Jira Issue Link : https://jira-stage.corp.stingraydigital.com/browse/CUSTTS-1089

Activity

D **deployment57** added this card to ON HOLD
Jan 15, 2019 at 11:15 AM

EGLA-TRELLO-000638

Page 909 of 1912 (IPR2025-00350)
Stingray Group Inc. et al v. Hernandez-Mondragon

Case 1:24-cv-21226-RAR Document 82-17 Entered on FLSD Docket 07/15/2024 Page 121 of 136

Ubiquicast Control Site - Itération 5: Logs et Alertes + supporter autres softwares

in list ON HOLD

Description

- Supporter des logs en direct, lisible par le Control Site
  - Générer des alertes selon les différents logs reçu par le control site en utilisant Monit.
  - Supporter les Update de Software/Config pour
    Caching Proxy UbiMetaServer
    Still pic (peut être juste la config) GalaxieClient
    ** autres (avec un path absolu) ?
    #

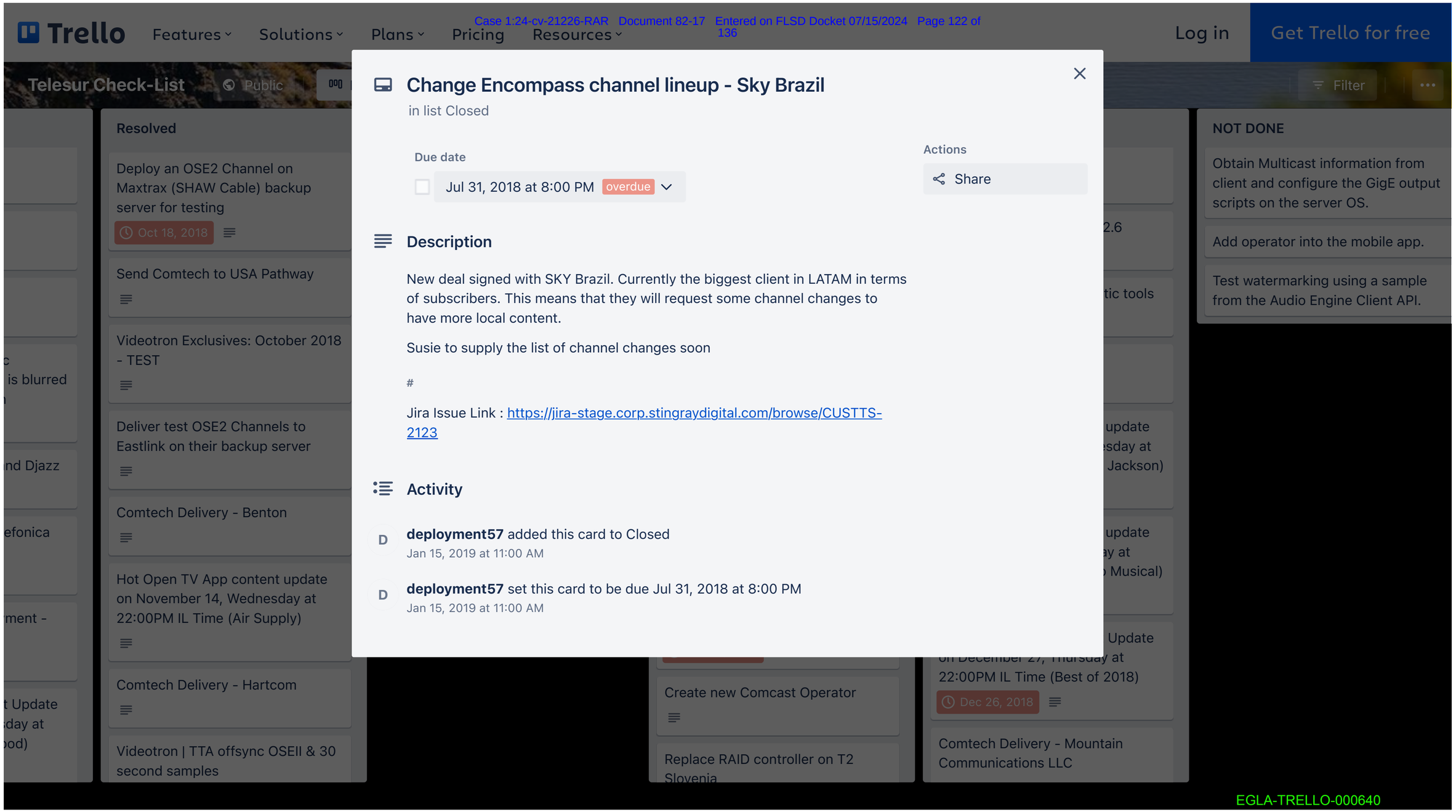
    Jira Issue Link : https://jira-stage.corp.stingraydigital.com/browse/CUSTTS-1090

Activity

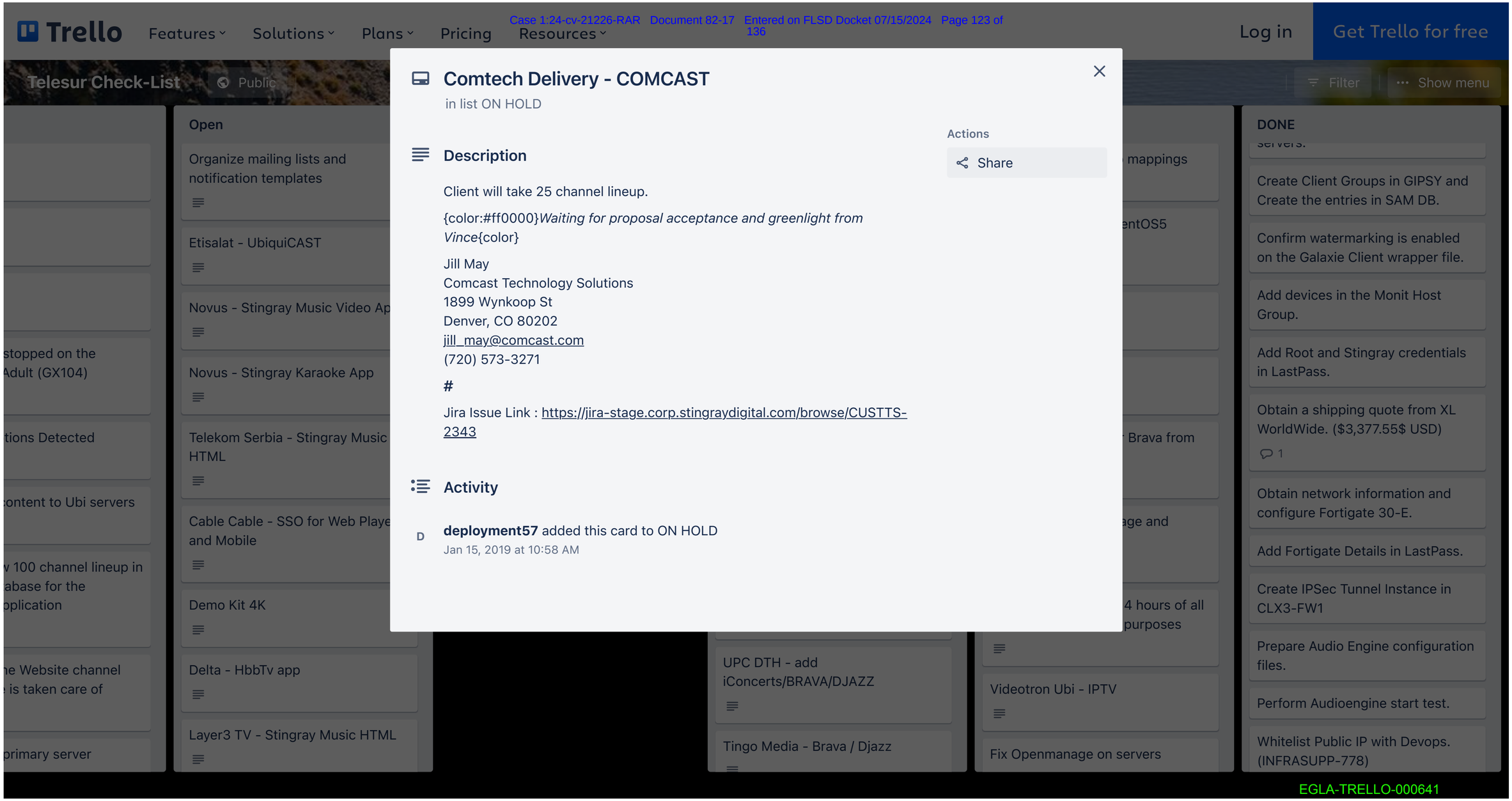
D **deployment57** added this card to ON HOLD
Jan 15, 2019 at 11:15 AM

EGLA-TRELLO-000639

Page 910 of 1912 (IPR2025-00350)
Stingray Group Inc. et al v. Hernandez-Mondragon



EGLA-TRELLO-000640


Trello
Features
Solutions
Plans
Pricing
Resources
Log in
Get Trello for free
Telesur Check-List
Public
Filter
Show menu
Open
Organize mailing lists and notification templates
Etisalat - UbiquiCAST
Novus - Stingray Music Video Ap
Novus - Stingray Karaoke App
Telekom Serbia - Stingray Music HTML
Cable Cable - SSO for Web Playe and Mobile
Demo Kit 4K
Delta - HbbTv app
Layer3 TV - Stingray Music HTML
UPC DTH - add iConcerts/BRAVA/DJAZZ
Tingo Media - Brava / Djazz
Videotron Ubi - IPTV
Fix Openmanage on servers
DONE
Create Client Groups in GIPSY and Create the entries in SAM DB.
Confirm watermarking is enabled on the Galaxie Client wrapper file.
Add devices in the Monit Host Group.
Add Root and Stingray credentials in LastPass.
Obtain a shipping quote from XL WorldWide. ($3,377.55$ USD)
1
Obtain network information and configure Fortigate 30-E.
Add Fortigate Details in LastPass.
Create IPSec Tunnel Instance in CLX3-FW1
Prepare Audio Engine configuration files.
Perform Audioengine start test.
Whitelist Public IP with Devops. (INFRASUPP-778)
Comtech Delivery - COMCAST
in list ON HOLD
Actions
Share
Description
Client will take 25 channel lineup.
{color:#ff0000}Waiting for proposal acceptance and greenlight from Vince{color}
Jill May
Comcast Technology Solutions
1899 Wynkoop St
Denver, CO 80202
jill_may@comcast.com
(720) 573-3271
#
Jira Issue Link : https://jira-stage.corp.stingraydigital.com/browse/CUSTTS-2343
Activity
deployment57 added this card to ON HOLD
Jan 15, 2019 at 10:58 AM

Bell - add Juicebox

in list Closed

Description

Contact:Smith, Adriaan adriaan.smith@bell.ca

Sting Ray video specifications
Juice Box will be HD
Video: 720p 59.94 (at Bell's request)
Audio: AC 2.0 384k (-24 lkfs audio normalisation)
CC format: 708 (HD CC)
Compression: MPEG4 (10mb).
Down-convert: always letterbox 24x7.

Hand off
Gige output will from main Stingray and back up will be via spare ports on the Dektek 2160 (for de-jitter purposes).
Encryption: no encryption.

To be determined
Multicast: same multicast option vs. New independent multicast (TBD). Adriaan to enquire about this.
Gige hand off: copper/optical. Jaime / Chris to investigate and advise.

#

Jira Issue Link : https://jira-stage.corp.stingraydigital.com/browse/CUSTTS-1878

Activity

D **deployment57** added this card to Closed
Jan 15, 2019 at 11:03 AM

EGLA-TRELLO-000642

TvCable -- Increase volume on music channels

in list Closed

Description

AC3 encoder is currently running at +3 dB. Currently waiting to see if they have a desired level that they wish to increment by.

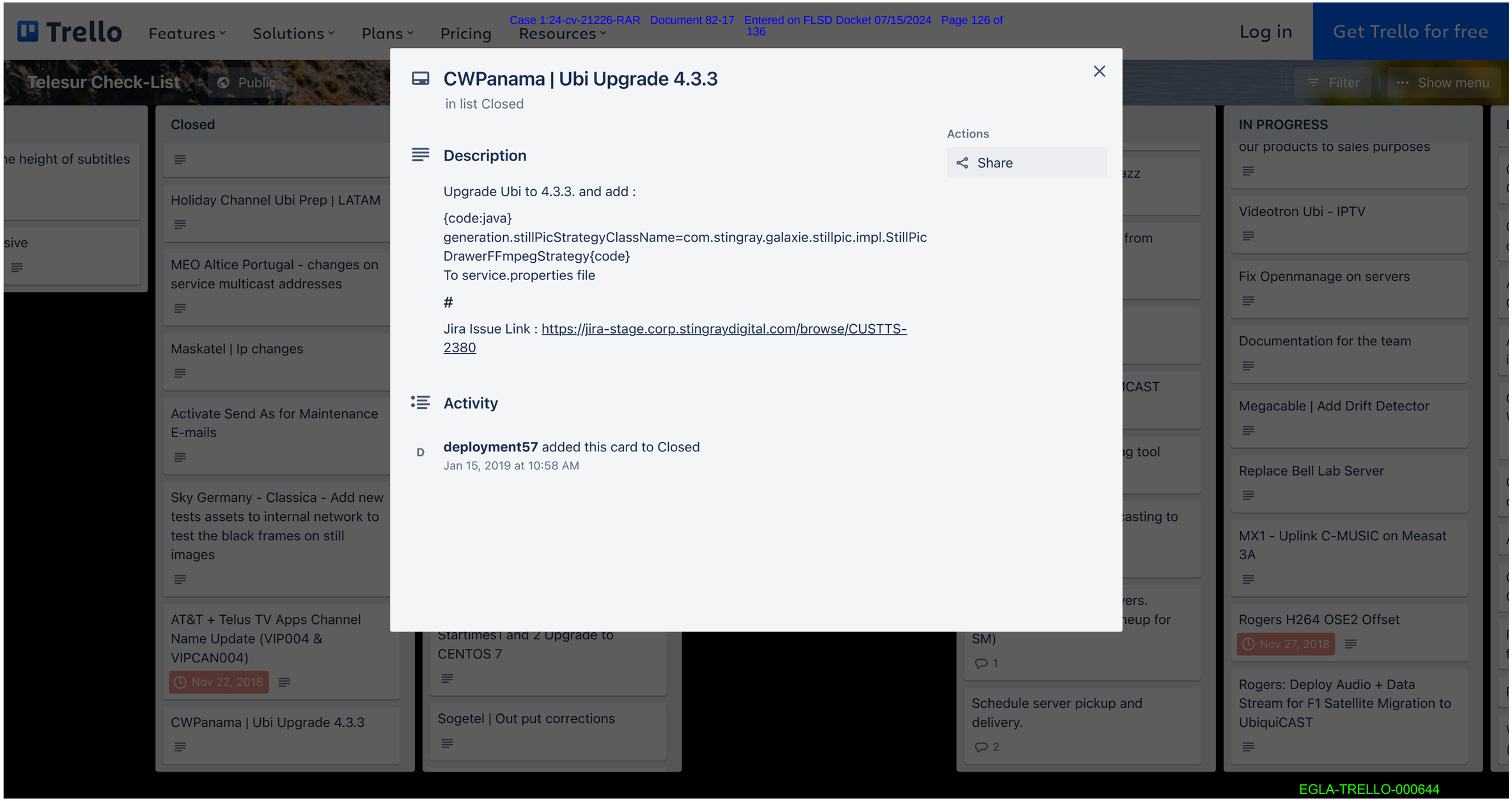
#

Jira Issue Link : https://jira-stage.corp.stingraydigital.com/browse/CUSTTS-1728

Activity

D **deployment57** added this card to Closed
Jan 15, 2019 at 11:06 AM

EGLA-TRELLO-000643



EGLA-TRELLO-000644

Case 1:24-cv-21226-RAR Document 82-17 Entered on FLSD Docket 07/15/2024 Page 127 of 136

Rogers -- OSE 2 transitions behind

in list Closed

Description

Need to confirm if its both Mpeg2 and H264 servers or just one version of the signal. Should be fixed by properly setting the line change delay in the muxer.

#

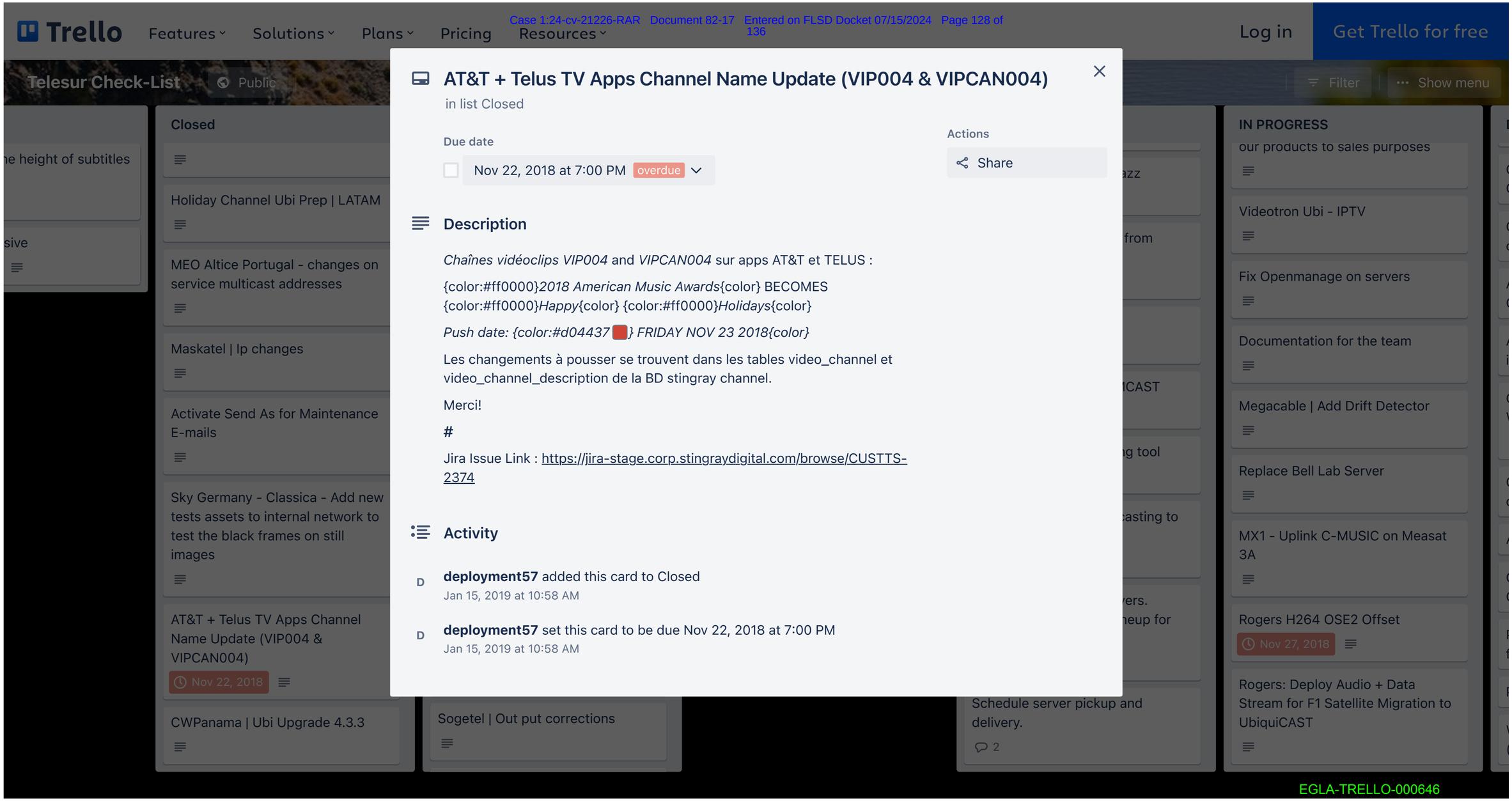
Jira Issue Link : https://jira-stage.corp.stingraydigital.com/browse/CUSTTS-1719

Activity

D **deployment57** added this card to Closed
Jan 15, 2019 at 11:06 AM

EGLA-TRELLO-000645

Page 916 of 1912 (IPR2025-00350)
Stingray Group Inc. et al v. Hernandez-Mondragon



EGLA-TRELLO-000646

WIDGET - Mundial

in list Closed

Description

Guys, as mentioned, here's the channel link (VIB T0064):
[https://music.stingray.com/fr/channels/VIB_T0064/Mundial-Montreal-2018]

On voudrait un widget vertical, pour remplacer celui de Spotify ([https://mundialmontreal.com/])

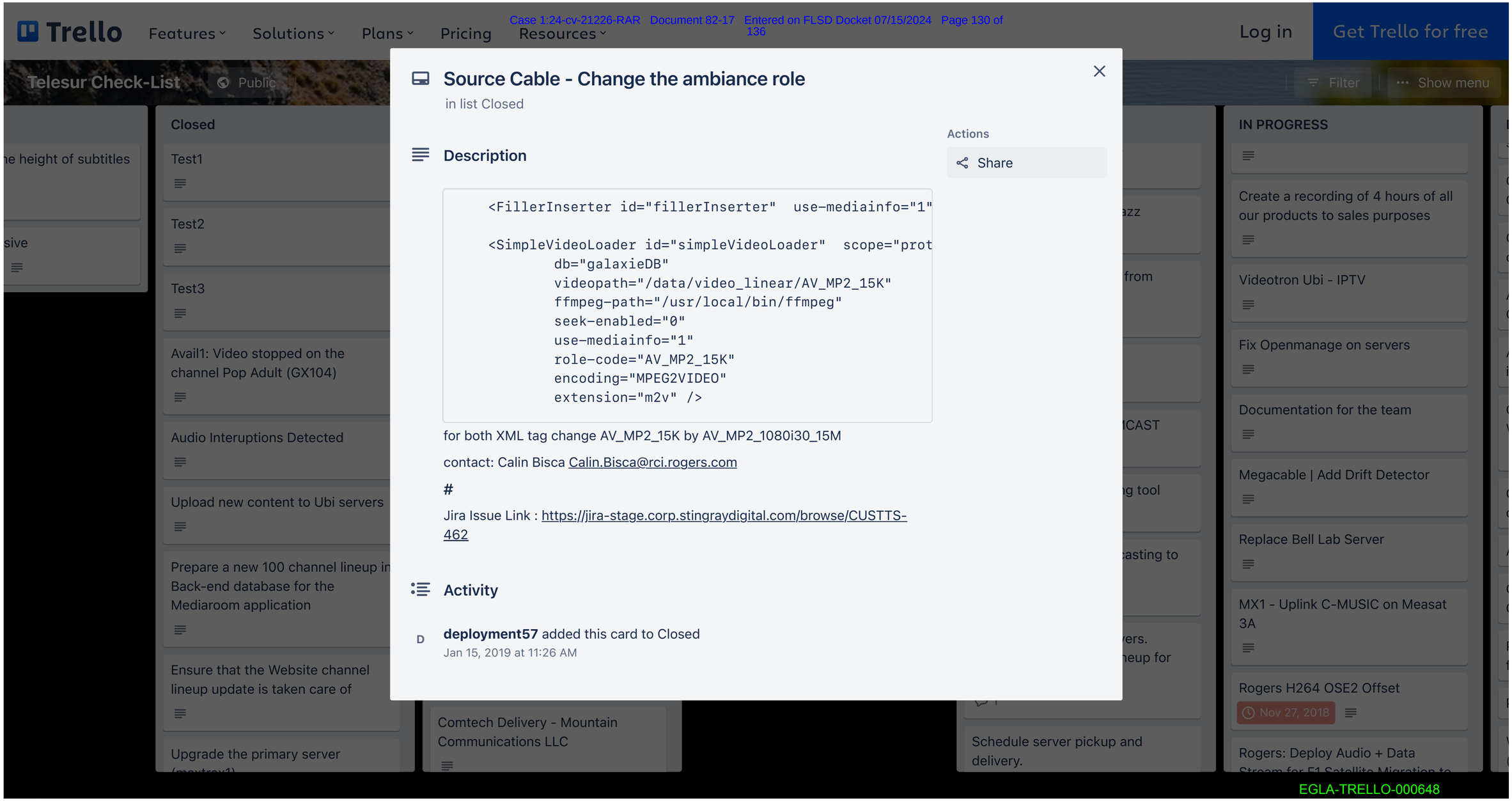
#

Jira Issue Link : https://jira-stage.corp.stingraydigital.com/browse/CUSTTS-2351

Activity

D **deployment57** added this card to Closed
Jan 15, 2019 at 10:58 AM

EGLA-TRELLO-000647



EGLA-TRELLO-000648

eglacomm / mediamplify_headend
Private
Code
Issues
Pull requests
Actions
Projects
Wiki
Security
Insights
Settings
Unwatch 2
Star 0
Fork 0
master
1 branch
0 tags
Go to file
Add file
Code
edwinhm All Changes to MEDIAMPLIFY
f27421a on May 8, 2014
25 commits
caching
httpsegmenter updates with TimeStamp and Data
8 years ago
configurations
All Changes to MEDIAMPLIFY
7 years ago
httpsegmenter
All Changes to MEDIAMPLIFY
7 years ago
opencaster
Chantes to autoconf for SSH in AXTEL DEMO and others
8 years ago
streamer_backup
All Changes to MEDIAMPLIFY
7 years ago
streamer_main
Updated main/backup latest from AXTEL updated
8 years ago
www
Updates to configurations, stream*, and VLC on haendend device
8 years ago
README.md
Initial commit
9 years ago
ffmpeg for mpeg2video
All Changes to MEDIAMPLIFY
7 years ago
mediamplify_headend
OpenCaster and TSTool merge to mediamplify_headend
8 years ago
README.md
mediamplify_headend
About
No description, website, or topics provided.
Readme
Releases
No releases published
Create a new release
Packages
No packages published
Publish your first package
Contributors 2
jhgg Jake
eglacomm EGLA COMMUNICATIO...
Languages
TypeScript 62.5%
Shell 32.4%
C 4.1%
Python 0.5%
C++ 0.3%
D 0.1%
Other 0.1%

LISTEN TO STINGRAY MUSIC ON EVERY DEVICE

Hang out. Go out. Work out. Chill out.

We've done all the work so you don't have to. Listen to music channels lovingly curated for all the moments that matter. Available on all your devices.*

ON MOBILE

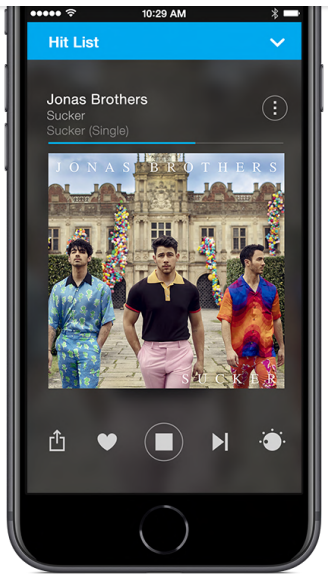
Place to go?
Stream music on the go!

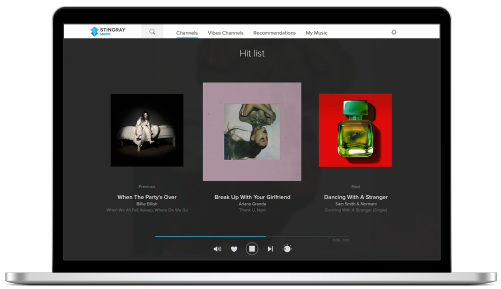
EGLA-TRELLO-000650

anywhere, anytime.

Download the app

Download on the App Store GET IT ON Google Play





ON THE WEB

Ready, Set, Bookmark!

The Stingray Music web player has all the same great features as the mobile app. Browse by activity, mood, genre, era, or theme.*

Listen now

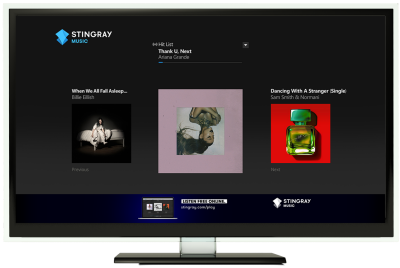
EGLA-TRELLO-000651

ON TV

Fill your home with Music.

Stingray Music transforms your TV into your personal jukebox. Tune in to channels in all genres curated to soundtrack all the moments that matter.

Learn how



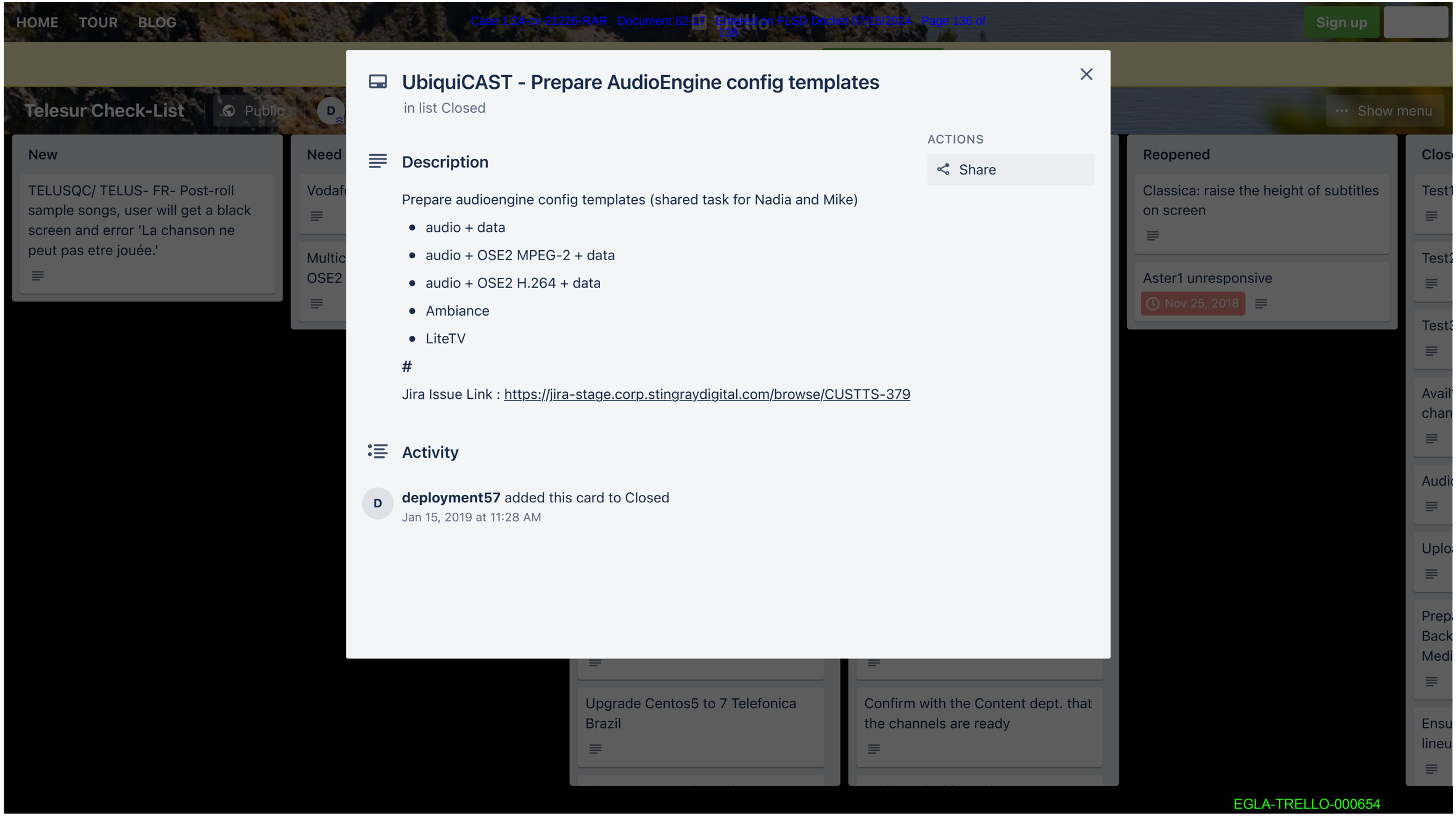
EGLA-TRELLO-000652

Page 923 of 1912 (IPR2025-00350)
Stingray Group Inc. et al v. Hernandez-Mondragon



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EGLA-TRELLO-000653



EGLA-TRELLO-000654

EXHIBIT 17

Thursday, June 3, 2021 at 18:05:56 Eastern Daylight Time

Subject: Intellectual Property Teft
Date: Monday, April 14, 2014 at 2:51:11 PM Eastern Daylight Time
From: Edwin Hernandez, PhD
To: IPRCenter@dhs.gov
CC: Dr. Alcides Hernandez
Category: Emails
Attachments: 263CA39C-2150-4225-B52A-6874B300F67D[3].png

Hi DHS,

We have notified STINGRAY MEDIA, a company from Canada, that they are illegally using our software and technology located in ENCOMPASS / TIA in Argentina, and have access to out trade secrets, thru their staff in Miami, FL.

STINGRAY however has access to our software in a server hostage in a location in Argentina at, this was taken over illegally after a transaction made by MOOD MEDIA. This server is required so MOOD MEDIA and STINGRAY can complete a $16,000,000 dollars deal

Address:
Saenz Valiente 2420
B1640GNX Martinez
Prov. De Buenos Aires
Republica Argentina

Best Regards,

--
Edwin A. Hernandez, PhD

Chief Technology Officer - Founder
EGLA COMMUNICATIONS
"Your media streaming and cloud storage provider"

Twitter | *Facebook* *edwinhm@eglacorp.com*
www.eglacomm.net | www.mediamplify.com | mediamplifymusic.com| www.huladrive.com
Office: 561.869.4446 * Cell: 561.306.4996 | +504 95222554 * Fax: 954.919.1494
skype: edwinhe eglacomm

EXHIBIT 18

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

MUSIC CHOICE, *Plaintiff*, v. STINGRAY GROUP INC. (f/k/a STINGRAY DIGITAL GROUP INC.) and STINGRAY MUSIC USA, INC., *Defendants*.	§ § § § § § § § § § §	C.A. No: 2:16-cv-00586-JRG-RSP (Lead Case) **FILED UNDER SEAL**

DEFENDANTS' *DAUBERT* MOTION TO EXCLUDE CERTAIN OPINIONS AND TESTIMONY OF MUSIC CHOICE'S DAMAGES EXPERT, DR. KEITH R. UGONE

TABLE OF CONTENTS

I. INTRODUCTION 1
II. BACKGROUND 2
A. Background of this Action 2
B. Music Choice and Its Music Services 3
C. Stingray and Its Music Services 4
D. The Patents-in-Suit 5
E. Dr. Ugone's Damages Reports 5
F. Dr. Ugone's Report On Commercial Success 6
III. ARGUMENT 6
A. Legal Standard 6
B. Dr. Ugone's Opinions With Respect To Lost Profits Should Be Excluded 7
1. Dr. Ugone Incorrectly Applied Panduit Factor 2 In Calculating Lost Profits With Respect To The Visual Complement Patent 8
2. Dr. Ugone's Calculation Of Lost Profits With Respect To The VOD Linking Patents Is Speculative And Unreliable 9
C. Dr. Ugone's Opinions With Respect To Price Erosion Should Be Excluded As Flawed, Speculative, And Unreliable 12
D. Dr. Ugone's Opinions With Respect To Commercial Success Should Be Excluded As Unreliable And Based On A Flawed Methodology 14
IV. CONCLUSION 15

TABLE OF AUTHORITIES

Page(s)

Cases

Crystal Semiconductor Corp. v. TriTech Microelectronics Int'l, Inc.,
246 F.3d 1336 (Fed. Cir. 2001).....11, 12

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2001 U.S. Dist. LEXIS 26485 (E.D. Tex. Mar. 13, 2001).....14

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482 F.3d 347 (5th Cir. 2007) 7

Kumho Tire Co. v. Carmichael,
526 U.S. 137 (1999).....6

Moore v. Int'l Paint, LLC,
547 Fed.Appx. 513 (5th Cir. 2013).....12

O2 Micro Int'l Ltd. v. Beyond Innovation Tech.,
2005 U.S. Dist LEXIS 47075 (E.D. Tex. Dec. 15, 2005).....10

Panduit Corp. v. Stahlin Bros. Fibre Works, Inc.,
575 F.2d 1152 (6th Cir. 1078) 7, 8

Presido Components, Inc. v. Am. Techn. Ceramics Corp.,
875 F.3d 1369 (Fed. Cir. 2017).....7, 8

Spellbound Dev. Group Inc. v. Pac. Handy Cutter Inc.,
2012 U.S. Dist LEXIS 188907 (C.D. Cal. Feb. 24, 2012).....9, 12, 13

SynQor, Inc. v. Artesyn Techs., Inc.,
No. 2:07-cv-497-TJW-CE, 2010 U.S. Dist. LEXIS 144244 (Dec. 13, 2010 E.D. Tex.).....7

U.S. v. Valencia,
600 F.3d 389 (5th Cir. 2010) 7

Other Authorities

Fed. R. Evid. 702 6

Defendants Stingray Group Inc. (f/k/a Stingray Digital Group Inc.) and Stingray Music USA, Inc. (collectively, "Stingray") respectfully move to exclude certain opinions and testimony of Plaintiff Music Choice's ("MC") damages expert, Dr. Keith R. Ugone.

I. INTRODUCTION

This is a patent infringement action involving increasingly irrelevant technology—linear audio and video on demand ("VOD") music channels transmitted to consumers by cable and satellite television providers. The number of cable and satellite television subscribers is rapidly declining each year. Nonetheless, MC's damages expert, Dr. Keith R. Ugone, opined that MC suffered over [redacted] in lost profits and price erosion damages based on the flawed assumption that, had Stingray not offered purportedly infringing products, the prices paid for MC's services by its customers—i.e., the same cable and satellite television providers whose subscriber counts are ***decreasing***—would not have changed. Dr. Ugone did not consider and/or discuss any market forces in making this assumption. Similarly, Dr. Ugone did not consider and/or discuss the ample evidence of [redacted] several years before Stingray even entered the market with its allegedly infringing technology. Instead, Dr. Ugone simply looked at what MC's customers agreed to pay immediately prior to Stingray's alleged infringement, and determined that was the only evidence needed to support his damages calculations. Accordingly, Dr. Ugone's lost profits and price erosion damages opinions are flawed, speculative, unreliable and should be excluded.

In addition, Dr. Ugone should be precluded from testifying about commercial success in support of MC's contention that U.S. Patent No. 9,357,245 ("the '245 patent") is not obvious over the

prior art.[1] Dr. Ugone's opinion is devoid of any evidence that MC's services purportedly covered by the '245 patent, namely, MC's linear audio music channels with visual complements, achieved any measurable level of success, as required by Federal Circuit law. For example, Dr. Ugone did not conduct a market share analysis or provide financial or sales data corresponding to MC's linear audio music channels. Accordingly, Dr. Ugone's methodology for determining commercial success, as it relates to obviousness of the '245 patent, is flawed and should be excluded.

II. BACKGROUND

A. Background of this Action

Until recently, linear audio and/or VOD music channels were primarily provided to consumers (hereafter, "subscribers") by multichannel video programming distributors ("MVPDs"), i.e., cable and satellite television companies. (*See* Expert Report of Keith R. Ugone, Ph.D, dated September 27, 2017 ("Report") (Ex. 1), ¶2). In order to do so, an MVPD executes a contract with a music service provider (e.g., MC, Stingray, DMX, XMSirius), where the MVPD agrees to pay the music service provider a monthly rate per subscriber ("subscriber rate") in exchange for one or more music services, including, for example, linear audio and/or VOD music channels, among others. (*See, e.g.,* Report (Ex. 1), ¶¶40-41, 62). The linear audio and/or VOD music channels are then provided by each MVPD to its respective subscribers as part of a larger cable package, which includes several hundred additional television channels. (*Id.*) There is no evidence in the record that any subscriber: (1) has chosen an MVPD based on the music channels offered by the MVPD; or (2) has cancelled his/her subscription based on the music channels offered (or not offered) by the MVPD. (Deposition Transcript of Keith Ugone, Ph.D, dated May 10, 2019 ("Ugone Tr.") (Ex. 2), 117:17-118:6, 159:1-6).

[1] In view of the related IPR proceedings, the parties agree that there are no prior art invalidity arguments remaining with respect to the other two patents-in-suit. Dr. Ugone should, therefore, be precluded from providing any commercial success testimony as to those patents as well.

Typically, each MVPD executes a contract with only one music services provider at a time for a period of several years. (Report (Ex. 1), ¶¶40-41, 62). At the end of the contract, the MVPD can either (1) execute a contract extension with the existing provider, or (2) execute a new contract with another provider. Regardless of whether an MVPD executes a contract extension or a new contract, it is common for subscriber rates to change at the end of each contract. (*See, e.g.,* Report (Ex. 1), ¶¶67-71).

The market for MVPDs, and consequently the music services market, is changing. (Supplemental Rebuttal Expert Report of Michele Riley ("Riley Report") (Ex. 3), ¶¶81-83 (citing www.nasdaq.com/article/cord-cutting-continues-to-impact-pay-tv-services-ott-a-boon-cm834151 (Ex. 20))). Subscribers no longer need to subscribe to an MVPD in order to have access to television programming, including for example, audio and VOD music channels. (*Id.*) Now, subscribers have access to the same programming through a variety of sources, including, for example, Netflix, HBO GO, and Amazon Prime, among others. (*See id.*) Thus, the number of MVPD subscribers is declining each year. (*Id.*)

B. Music Choice and Its Music Services

MC is headquartered in Horsham, Pennsylvania and is owned by several MVPDs, including Cox Communications, Inc., Comcast Corporation, Charter Communications, and Time Warner Inc. (collectively, the "Partner MVPDs"). (Report (Ex. 1), ¶31). [redacted] (Deposition Transcript of Christina Tancredi, dated September 15, 2017 ("Tancredi Tr.") (Ex. 4), 296:21-298:13).

MC launched linear audio music channels in 1994. (Report (Ex. 1), ¶29). Since then, it has offered several audio and VOD music channel services. (*Id.*, ¶¶43-44, Table 4). Not all of MC's services are covered by the patents-in-suit. (*Compare*, Report (Ex. 1), Table 4 to R12-14 to the Russ Invalidity Report (Exs. 5-7). Some of the services offered by MC are its (1) Audio Service; (2) SWRV

Service; and (3) VOD Service. ([redacted]) (Ex. 8) at MC-Stingray00138162-163). MC's Audio Service consists of linear audio music channels (*id.*); its SWRV Service which consists of MC's linear music video networks (*id.*); and its VOD Service which consists of video-on-demand music programming (*id.*). The MVPDs that MC contracts with receive one or more of these services. (*See, e.g., id.*)

C. Stingray and Its Music Services

Stingray is a "world-leading provider" of music services to MVPDs, including Stingray Music (linear audio music), Stingray Music Videos (VOD), Stingray Concerts, and Stingray Karaoke. (www.stingray.com/about-us/who-we-are (Ex. 21)). Stingray's linear audio music channels are provided through its UbiquiCAST system. (Report (Ex. 1), ¶47) Stingray's linear audio music channels include "on screen enhancements," [redacted] (*Id.*, ¶¶48-49). Stingray's linear audio service, [redacted] is a music service that enables an MVPD to stream linear audio music along with an image to subscribers' televisions. (*Id.*, ¶48, Fig. 5). [redacted]. (*Id.*, ¶48; Riley Report (Ex. 3), ¶9). Stingray provides its linear audio service [redacted] to over 300 MVPDs in the United States. (STINGRAY118548 (Ex. 9)). [redacted] (Ugone Tr. (Ex. 2), 163:4-164:19, 168:19-169:14; [redacted].

Stingray also offers MVPDs music video TV channels through [redacted].

(STINGRAY118548 (Ex. 9)). Although Stingray provides at [redacted], [redacted]t (the "Stingray Music TV App"). (*Id.*; Report (Ex. 1), ¶49). Stingray first provided [redacted] with the accused Stingray Music TV App in March 2015. ([redacted](Ex. 11), pp. 1, 9); [redacted] (Ex. 12)). Prior to March 2015, Stingray did not offer or provide any music video TV channels to MVPDs that are accused of infringing the patents-in-suit. (*See id.*; Report (Ex. 1), ¶¶62, 88).

D. The Patents-in-Suit

MC filed this action on June 6, 2016, and thereafter, filed its third amended complaint on March 17, 2017, asserting infringement of five patents. (Dkt. 1, Dkt. 84). After a stay of this action pending IPRs, three patents-in-suit remain: U.S. Patent No. 9,357,245 (the "'245 patent" or the "Visual Complement Patent"), U.S. Patent No. 7,320,025 (the "'025 patent"), and U.S. Patent No. 9,351,045 (the "'045 patent"). (Dkt. 173.) The '245 patent is directed to enhancing the visual display a user sees when tuned to a broadcast music channel on his or her television set with graphics, e.g., album art, relating to the song being played. (*See e.g.*, '245 patent (Dkt. 1-2), 4:54-62.)

The '025 and '045 patents (collectively, the "VOD Linking Patents") are related patents and share a common specification. (*See* '025 patent (Dkt. 1-3); '045 patent (Dkt. 1-4)). The purported invention of the VOD Linking Patents is enabling users to select and watch music videos of their choosing while the music and/or video currently on the screen continues to play. ('025 Patent (Dkt. 1-3, 1:46-56; Report (Ex. 1), ¶42).

E. Dr. Ugone's Damages Reports

Dr. Ugone submitted a damages report on September 27, 2017 ("Report") (Ex. 1), and a post-stay supplemental report on April 12, 2019 ("Supplemental Report") (Ex. 13). In the Report, Dr. Ugone

concluded that MC suffered (1) lost profits due to Stingray's alleged infringement of both the Visual Complement Patent and the VOD Linking Patents; and (2) price erosion due to Stingray's alleged infringement of the VOD Linking Patents.[2] (Report (Ex. 1), Table 2; Ugone Tr. (Ex. 2), 70:13-24). Dr. Ugone did not provide a calculation for any reasonable royalty damages. (*See, generally, Id.*) In the Supplemental Report, Dr. Ugone updated the damages calculations, but his methodologies did not change. (Supplemental Report (Ex. 13), Table 2, ¶¶4-17).

F. Dr. Ugone's Report On Commercial Success

In addition, Dr. Ugone prepared a report on commercial success in support of MC's position that the patents-in-suit are non-obvious. (("Commercial Success Report") (Ex. 14), Ugone Tr. (Ex. 2), 149:9-25). Despite not providing a market share analysis, let alone any evidence of the success of MC's linear audio music channels (*See* Commercial Success Report (Ex. 14), ¶¶37-45; Ugone Tr. (Ex. 2), 121:10-19, 253:4-16), Dr. Ugone concluded that [redacted] (Commercial Success Report (Ex. 14), ¶37).

III. ARGUMENT

A. Legal Standard

An expert witness may provide opinion testimony if "(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the facts of the case." Fed. R. Evid. 702; *see also Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 149 (1999); *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 592-93 (1993). "Rule 702 demands that expert

[2] At that time, there were three VOD Linking Patents in suit—[redacted] (Report (Ex. 1), ¶11, Table 2; Ugone Tr. (Ex. 2), 75:22-25.)

testimony related to scientific, technical or other specialized knowledge, which does not include unsubstantiated speculation and subjective beliefs." *SynQor, Inc. v. Artesyn Techs., Inc.*, No. 2:07-cv-497-TJW-CE, 2010 U.S. Dist. LEXIS 144244 (Dec. 13, 2010 E.D. Tex.). "The reliability analysis applies to all aspects of an expert's testimony: the methodology, the facts underlying the expert's opinion, and the link between the facts and the conclusion." *Knight v. Kirby Inland Marine, Inc.,* 482 F.3d 347, 355 (5th Cir. 2007). Although the Fifth Circuit and other courts have identified various factors that the district court may consider in determining whether an expert's testimony should be admitted, the nature of the factors that are appropriate for the court to consider is dictated by the ultimate inquiry – whether the expert's testimony is sufficiently reliable and relevant to be helpful to the finder of fact and thus warrant admission at trial. *U.S. v. Valencia*, 600 F.3d 389, 424 (5th Cir. 2010).

B. Dr. Ugone's Opinions With Respect To Lost Profits Should Be Excluded

Dr. Ugone opines that MC should be awarded [redacted] in lost profits for infringement of the Visual Complement Patent and [redacted] in lost profits for infringement of the VOD Linking Patents. (Supplemental Report (Ex. 13), Table 2.) "To recover lost profits, the patentee bears the burden of proof to show a reasonable probability that but for infringement, it would have made the sales that were made by the infringer." *Presido Components, Inc. v. Am. Techn. Ceramics Corp.*, 875 F.3d 1369, 1380 (Fed. Cir. 2017) (citations omitted). "But-for causation can be proven using the test given in *Panduit Corp. v. Stahlin Bros. Fibre Works, Inc.,* 575 F.2d 1152 (6th Cir. 1078)." *Id.* "The four-factor *Panduit* test requires the patentee to show: (1) demand for the patented product; (2) an absence of acceptable, noninfringing substitutes; (3) manufacturing and marketing capability to exploit the demand; and (4) the amount of profit that would have been made." *Id.* (citing *Panduit*, 575 F.2d at 1156). However, Dr. Ugone's application of *Panduit* factors to the facts of this case is unreliable, and

therefore, Dr. Ugone's lost profits opinions should be excluded.

1. Dr. Ugone Incorrectly Applied *Panduit* Factor 2 In Calculating Lost Profits With Respect To The Visual Complement Patent

Dr. Ugone does not dispute that the second *Panduit* factor is the "absence of acceptable, noninfringing substitutes." *Presido*, 875 F.3d at 1380; Report (Ex. 1), n. 92. Nonetheless, in providing his opinions, Dr. Ugone characterizes the second *Panduit* factor differently, namely, as whether [redacted] (Report (Ex. 1), ¶53). While Dr. Ugone alleges that [redacted] (*id.*, n. 92), Dr. Ugone did not perform this analysis with respect to MC's purported lost profits resulting from Stingray providing [redacted].

Dr. Ugone understands that the Visual Complement Patent teaches, *inter alia*, "providing on-screen visual complements, such as album art or artist images associated with the song that is playing . . . within linear [audio] music channels." (Report (Ex. 1), ¶42.b). Dr. Ugone further understands that [redacted]. (Report (Ex. 1), ¶¶47-49). Nonetheless, Dr. Ugone opines that [redacted] is not an acceptable non-infringing substitute because of "the importance of the features and benefits enabled by the Visual Complement Patent." (Supplemental Report, (Ex. 13) ¶22.a.). But this is not the correct methodology for determining whether acceptable non-infringing alternatives exist under *Panduit*. Rather, "[t]he correct inquiry under *Panduit* is whether a non-infringing alternative would be acceptable compared to the ***patent owner's product*** . . ." *Presido*, 875 F.3d at 1381 (emphasis added). Dr. Ugone did not determine whether Stingray's [redacted] is an acceptable non-infringing alternative ***as compared to MC's linear audio music channels***. Had he done this analysis, he would have determined that it is. (*See* Ugone Tr.

(Ex. 2), 163:4-164:18). Indeed, Dr. Ugone does not dispute that [redacted]. (Ugone Tr. (Ex. 2), 163:4-164:19). [redacted] (*Id.*)

Accordingly, Dr. Ugone's determination that MC should be awarded lost profits for Stingray's alleged infringement of the Visual Complement Patent is flawed and unreliable, and his opinions with respect to that determination should be excluded. *See Spellbound Dev. Group Inc. v. Pac. Handy Cutter Inc.*, 2012 U.S. Dist LEXIS 188907 at *3 (C.D. Cal. Feb. 24, 2012) (excluding expert's damages calculation because the expert, *inter alia*, provided no basis for his conclusion that there were no acceptable non-infringing alternatives).

2. Dr. Ugone's Calculation Of Lost Profits With Respect To The VOD Linking Patents Is Speculative And Unreliable

Dr. Ugone's lost profits analysis relating to the VOD Linking Patents is based on an assumption that is speculative and flawed and, as such, should be excluded. Dr. Ugone determined that [redacted] as a result of Stingray's alleged infringement of the VOD Linking Patents and calculated that MC lost over [redacted] as a result. (Supplemental Report (Ex. 13), Table 2). Dr. Ugone's calculation is based on the assumption that [redacted]. (Report (Ex. 1), ¶¶80-83; Supplemental Report (Ex. 13), ¶8; Ex. 7 to Supplemental Report ("[redacted] Lost Profits Calculation") (Ex. 15)). But Dr. Ugone provides no basis for his assumption.

During his deposition, Dr. Ugone explained that he chose the monthly subscriber rate of [redacted] simply because it was the agreed upon monthly rate in [redacted] contract with MC prior to [redacted] contract with Stingray. (Ugone Tr. (Ex. 2), 179:9-180:25). However, Dr. Ugone failed to consider and/or discuss the plethora of evidence demonstrating that monthly subscriber rates for music

services purportedly covered by the VOD Linking Patents varies, including that: [redacted] (Ex. 16) at MC-Stingray00347118, MC-Stingray00347187; Report (Ex. 1), Table 4). Tellingly, when questioned at his deposition, Dr. Ugone could not explain the discrepancy between this evidence and his assumed [redacted] monthly subscriber rate. (Ugone Tr. (Ex. 2), 182:5-186:23).

The speculative nature of Dr. Ugone's assumption is further compounded by the fact that there is no evidence that [redacted] for a music service covered by the VOD Linking Patents, including during the damages period.[3] *See O2 Micro Int'l Ltd. v. Beyond Innovation Tech.*, 2005 U.S. Dist LEXIS 47075 (E.D. Tex. Dec. 15, 2005) (damages expert's report lacked sufficient analysis, where price was 4-times higher than any price for competing products during the damages period). Importantly, Dr. Ugone's assumed monthly subscriber rate of [redacted] (Ex. 17) at MC-Stingray00138355). Indeed, the [redacted]:

[redacted]

[3] The damages period for the VOD Linking Patents is March 2015 to August 2019. (Ugone Tr. 75:11-17.)

[redacted]

(*Id.*) (emphasis added). But Dr. Ugone did not even attempt to determine the amount of the [redacted]

Moreover, Dr. Ugone's assumption that the monthly subscriber rate will remain unchanged contradicts his assumption regarding price erosion that [redacted]. (Ugone Tr. (Ex. 2), 194:19-195:16) For example, MC's Chief Operating Officer, Ms. Christina Tancredi, testified that [redacted]. (Tancredi Tr. (Ex. 4), 296:21-298:13). Dr. Ugone was aware of this testimony (Ex. 3 to Supplemental Report ("Supplemental Information Considered") (Ex. 18), p. 1), but did not explain why [redacted]. That Dr. Ugone only assumed that [redacted] in the context of price erosion damages, but not lost profits damages, speaks to the unreliability of Dr. Ugone's damages calculation.

Finally, that Dr. Ugone's assumed monthly subscriber rate is speculative is further supported by the fact that Dr. Ugone's damages reports are devoid of any discussion regarding price elasticity including, for example, the effect that lower MVPD subscriber counts may have on [redacted] willingness to continue paying a monthly subscriber rate of [redacted]. (Ugone Tr. (Ex. 2), 181:9-15); *see also Crystal Semiconductor Corp. v. TriTech Microelectronics Int'l, Inc.*, 246 F.3d 1336, 1359-60 (Fed. Cir. 2001) (excluding jury award for lost profits and price erosion damages because, *inter alia*, "the record does not contain sufficient evidence to show the reaction of the market if, 'but for' infringement, plaintiff would have tried to charge more" for its product). Dr. Ugone acknowledged that [redacted] subscriber count is decreasing each year (*see, e.g.,* [redacted] (Ex.

15)). Nonetheless, Dr. Ugone did not explain why, in the face of decreasing subscribers, [redacted] would be willing to pay MC a monthly subscriber rate that is [redacted] than what it agreed to pay Stingray for a similar type of music service.

Dr. Ugone's calculation of the lost profits suffered by MC due to Stingray's alleged infringement of the VOD Linking Patents is based on a speculative assumption, and, therefore, his opinions as to these damages should be excluded. *See Moore v. Int'l Paint, LLC*, 547 Fed.Appx. 513, 516 (5th Cir. 2013) (excluding expert's testimony because he "made a number of . . . assumptions that, while not strictly inconsistent with the evidence, had no basis in the record").

C. Dr. Ugone's Opinions With Respect To Price Erosion Should Be Excluded As Flawed, Speculative, And Unreliable

"To prove price erosion damages, a plaintiff must show that 'but for' infringement, it would have sold its product at higher prices." *Engineered Prod. Co. v. Donaldson Co., Inc.*, 147 Fed.Appx. 979, 990 (Fed. Cir. 2005) (citations omitted). "[T]he patentee's price erosion theory must account for the nature, or definition of the market, similarities between any benchmark market and the market in which price erosion is alleged, and the effect of the hypothetically increased price on the likely number of sales at that price in the market." *Crystal Semiconductor*, 246 F.3d at 1357. Where an expert's "finding of causation" for price erosion damages "is not adequately supported by the record," his opinions should be excluded. *Spellbound*, 2012 U.S. Dist. LEXIS 188907, at *3.

Dr. Ugone's price erosion opinions are flawed, speculative, and unreliable. Dr. Ugone contends that MC has suffered [redacted], collectively, in price erosion from [redacted] MVPDs with whom MC entered into agreements to provide music services. (Supplemental Report (Ex. 13), Table 4; *see also* Ex. 8 to Supplemental Report ("Cited Price Erosion Evidence") (Ex. 19)). For each of these MVPDs, [redacted]. (*See generally* Cited Price Erosion Evidence (Ex. 19)). Dr. Ugone opined that the [redacted]

[redacted] is solely due to Stingray's alleged infringement. (Ugone Tr. (Ex. 2), 210:24-211:6). However, Dr. Ugone's damages reports are devoid of any discussion and/or consideration of the many other possible reasons for the lower monthly subscriber rates.

First, Dr. Ugone did not take into account whether any of Stingray's ***non-infringing music services*** caused the MVPDs to lower the monthly subscriber rates. (Ugone Tr. (Ex. 2), 199:5-11). This is problematic given Dr. Ugone's admissions that: [redacted] (Ugone Tr. (Ex. 2), 198:3-6; 200:13-201:14). On this basis, alone, Dr. Ugone's price erosion opinions should be excluded. *See Spellbound*, 2012 U.S. Dist. LEXIS 188907, at *3-4 (excluding expert's calculation of price erosion because it was "based on a finding that there were no acceptable non-infringing substitutes," but "[t]he expert [did] not appear to discuss the basis for this conclusion").

In addition, Dr. Ugone did not consider and/or provide opinions regarding several other factors that may have caused the monthly subscriber rates to drop, including, for example [redacted] (*id.*, 209:2-210:23)[4]. (*See also* Report (Ex.

[4] Indeed, for at least some of the [redacted] MVPDs, Music Choice did not provide [redacted]. (*See, e.g.*, Music Choice Affiliation Agreement with [redacted], (Ex. 22), p. 1 [redacted]) (emphasis added)).

1), ¶¶84-93; Supplemental Report, (Ex. 13), ¶¶12-17). Accordingly. Dr. Ugone's price erosion opinions should be excluded. *See Ericsson, Inc. v. Harris Corp.*, 2001 U.S. Dist. LEXIS 26485, at *22 (E.D. Tex. Mar. 13, 2001) (excluding damages expert's testimony because, *inter alia*, he did not, "in his analysis, sufficiently take[] into consideration all of the many other factors that could cause a manufacturer of a product to lower prices, which undermines the reliability of his conclusion").

Finally, Dr. Ugone's price erosion opinions should be excluded because they are based on the flawed assumption that price erosion can result from agreements with MVPDs to whom Stingray did ***not*** even offer the allegedly infringing Stingray Music TV App. (Ugone Tr. (Ex. 2), 194:19-195:16). [redacted]. (Cited Price Erosion Evidence (Ex. 19), pp. 9-10, 23-25). Nonetheless, Dr. Ugone opines that MC could have suffered price erosion based on the assumption that these MVPDs are [redacted] (Ugone Tr. (Ex. 2),196:7-197:3). But Dr. Ugone cites no documentary evidence supporting this assumption. Accordingly, Dr. Ugone's assumption is speculative, and his opinions related thereto should be excluded. *See Engineered Prod.*, 147 Fed.Appx. at 990 (excluding price erosion damages because the evidence that plaintiff's customer was aware of defendant's bid to a third party was "too speculative to support the necessary inference" that plaintiff's customer knew of the bid).

D. Dr. Ugone's Opinions With Respect To Commercial Success Should Be Excluded As Unreliable And Based On A Flawed Methodology

In support of MC's claim that the Visual Complement Patent is not obvious, Dr. Ugone offered opinions that MC's linear audio music channels are commercially successful. (Commercial Success Report (Ex. 14), ¶¶37-49). "Evidence of commercial success . . . requires a patentee to establish [a] nexus between the claimed invention and the commercial success of a product or method."

Datatreasury Corp. v. Wells Fargo & Co., No. 2:06-cv072, 2010 U.S. Dist. LEXIS 150694, at *54 (Feb. 25, 2010 E.D. Tex.) "A prima facie case of nexus is generally made out when the patentee shows both that there is commercial success, and that the thing (product or method) that is commercially successful is the invention disclosed and claimed in the patent." *Id.* at *54-55. Dr. Ugone identifies MC's linear audio music channels as the service/product covered by the Visual Complement Patent (Commercial Success Report (Ex. 14), ¶41), but he does not determine that the linear audio music channels are commercially successful in accordance with Federal Circuit law.

Dr. Ugone cites to no evidence purportedly demonstrating the success of MC's linear audio music channels, themselves. Rather, Dr. Ugone cites to [redacted]. (Commercial Success Report (Ex. 14) ¶¶39-40). Without evidence of success of MC's linear audio music channels, Dr. Ugone cannot possibly opine that any success is attributed to the features of the Visual Complement Patent and, as such, Dr. Ugone's testimony should be excluded. *See Datatreasury*, 2010 U.S. Dist. LEXIS 150694, at *55-56 (excluding expert's testimony of commercial success because he did not have a reliable basis to demonstrate nexus).[5]

IV. CONCLUSION

In view of the foregoing, Stingray respectfully requests that the court grant its *Daubert* motion to exclude certain testimony and opinions of Dr. Ugone.

[5] To the extent Music Choice contends that "high viewership" or "popularity" (Commercial Success Report (Ex. 14), ¶¶41-45) is akin to commercial success, it is not. *Datatreasury*, 2010 U.S. Dist. LEXIS 150694, at *61 ("use does not necessarily indicate commercial success of the claimed invention because what is claimed may not necessarily drive what is sold or what is commercially successful").

Dated: May 31, 2019

Respectfully submitted,

GREENBERG TRAURIG, LLP

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CERTIFICATE OF CONFERENCE

On May 31, 2019, Julie Bookbinder and Elana Araj, counsel for Defendants, conferred with Robert Rhoad, counsel for Plaintiff, as required by Local Rule 7(h). Counsel for Plaintiff confirmed that Plaintiff opposes this motion. Discussions conclusively ended at an impasse, leaving an open issue for the Court to resolve.

/s/ Joshua L. Raskin
Joshua L. Raskin

CERTIFICATE OF SERVICE

The undersigned certifies that on this 31st day of May 2019, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document by electronic mail under Local Rule CV-5(d).

/s/ Joshua L. Raskin
Joshua L. Raskin

CERTIFICATE OF AUTHORIZATION TO FILE UNDER SEAL

Pursuant to Local Rule 5(a)(7)(A), the undersigned hereby certifies that the corresponding documents were filed under seal pursuant to the Court's First Amended Stipulated Protective Order (Dkt. No. 132).

/s/ Joshua L. Raskin
Joshua L. Raskin

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

MUSIC CHOICE, Plaintiff, v. STINGRAY DIGITAL GROUP INC. STINGRAY MUSIC USA, INC. Defendants.	)	C.A. No. 2:16-CV-0586-JRG-RSP **Jury Trial Demanded**

PLAINTIFF MUSIC CHOICE'S SUBMISSIONS PURSUANT TO LOCAL PATENT RULES 3-1 AND 3-2

Pursuant to the Local Patent Rules of the Eastern District of Texas, Plaintiff Music Choice ("MC") serves on defendants Stingray Digital Group Inc. and Stingray Music USA, Inc. (collectively "Stingray") the materials required by Rules 3-1 and 3-2 as follows.

RULE 3-1 – DISCLOSURE OF ASSERTED CLAIMS AND INFRINGEMENT CONTENTIONS

In accordance with Rule 3-1(a) and (b), the accused products and methods in this case (i) are the Stingray Music multi-platform systems and services, including the Stingray Music app, that provide digital audio music channels and music videos on demand through cable operator, satellite, Internet Protocol television (IPTV), mobile, and/or website platforms ("Stingray Music System/Method"), and (ii) are used, sold and/or offered for sale in, and/or imported into, the United States.

As required by Rules 3-1(a) and (c), claim charts showing "[e]ach claim of each patent in suit that is allegedly infringed by each opposing party" and "identifying specifically where each element of each asserted claim is found within each" accused system and method are attached as

MC-EGLA-000022
Stingray Ex. 1009
Page 950 of 1912 (IPR2025-00350)
Stingray Group Inc. et al v. Hernandez-Mondragon

Exhibits 1-5. As required by Rule 3-1(b), and based on information currently available to MC, the claim charts show that the Stingray Music System/Method literally infringes each of the asserted claims.

MC's infringement contentions regarding both the system and method claims are based on the information available to MC at this time, including data and inferences reasonably drawn from material regarding the Stingray Music System/Method that is available to MC from public sources. MC reserves the right to amend and revise these contentions as additional information becomes available to MC, through discovery or otherwise.

The claim charts are directed to an exemplary Stingray Music TV app that is offered on the AT&T U-verse® platform and exemplary Stingray Music mobile app that is offered on the iOS platform. However, all Stingray Music Systems/Methods that are similar in structure, function, and/or operation as the exemplary Stingray Music TV app offered on the AT&T U-verse® platform or the exemplary Stingray Music mobile app offered on the iOS platform are accused systems and methods (hereinafter included within the "Stingray Music System/Method").

In accordance with Rule 3-1(e), the claims in the patents-in-suit, U.S. Patent No. 8,769,602 ("the '602 Patent"), U.S. Patent No. 9,357,245 ("the '245 Patent"), U.S. Patent No. 7,320,025 ("the '025 Patent"), U.S. Patent No. 9,351,045 ("the '045 Patent"), and U.S. Patent No. 9,414,121 ("the '121 Patent") are entitled to the priority dates of an earlier patent application, as follows:

Patent	Claims	Priority Date
'602 Patent	All asserted claims	August 28, 2001
'245 Patent	All asserted claims	August 28, 2001

Patent	Claims	Priority Date
’025 Patent	All asserted claims	December 3, 2004
’045 Patent	All asserted claims	December 3, 2004
’121 Patent	All asserted claims	December 3, 2004

MC reserves the right to assert a priority date based on conception and reduction to practice of the claimed inventions before the dates set forth above.

Finally, MC reserves the right to rely, for any purpose, on the assertion that its own products, devices, processes, or acts practice the claimed inventions. In accordance with Rule 3-1(f), MC identifies that its multi-platform video and music network, including the MC Music Channels (“Music Channels”) and MC Video on Demand (“VOD”) systems and methods, that provide digital audio music channels and music videos on demand through cable operator, satellite, Internet Protocol television (IPTV), mobile, and/or website platforms (“MC System/Method”) practice the following claims (grouped by the patents-in-suit):

Patent	Claims Practiced by MC
’602 Patent	All asserted claims
’245 Patent	All asserted claims
’025 Patent	All asserted claims
’045 Patent	All asserted claims
’121 Patent	All asserted claims

RULE 3-2: DOCUMENTS ACCOMPANYING INFRINGEMENT CONTENTIONS

MC's disclosures, as required by Local Patent Rules 3-2(a), (b) and (c), are included on the DVD served on defendants by FedEx as specified in the Certificate of Service. The documents produced in accordance with Rules 3-2(a), (b), and (c) are throughout Bates range MC-Stingray00000001-MC-Stingray00119554. **Pending entry of a protective order in this lawsuit, MC designates each of the documents in this production "*Confidential: Outside Attorneys' Eyes Only*."**

MC reserves the right to use any document for any permitted purpose.

DATED: September 12, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of September, 2016, a true and correct copy of the foregoing PLAINTIFF MUSIC CHOICE'S SUBMISSIONS PURSUANT TO LOCAL PATENT RULES 3-1 AND 3-2 were served by electronic mail, upon the following counsel of record:

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Nasri V. B. Hage

EXHIBIT 1

Stingray's Infringement of the '602 Patent

UNITED STATES PATENT NO. 8,769,602 ("the '602 Patent")

This portion of Plaintiff's infringement contentions refers to the Stingray Music TV app that is offered on the AT&T's U-verse® platform and the Stingray Music mobile app that is offered on Apple's iOS platform as exemplary. These contentions apply to all similar Stingray Music products and services as offered on other platforms[1] (collectively the "Stingray Music System/Method").

#	'602 Patent	Stingray Music System/Method
1a	1. A method for providing a visual complement to an audio stream, comprising:	The Stingray Music Method, using the Stingray Music TV app on AT&T's U-verse® platform and/or the Stingray Music mobile app on Apple's iOS platform, is a method for providing a visual complement to an audio stream (*e.g.*, providing a song title, artist name, and/or album cover image as a visual complement to a song).

[1] These platforms include, for example, cable operator, satellite, Internet Protocol television (IPTV), mobile, and/or website platforms.

Exhibit 1: Stingray's Infringement of the '602 Patent

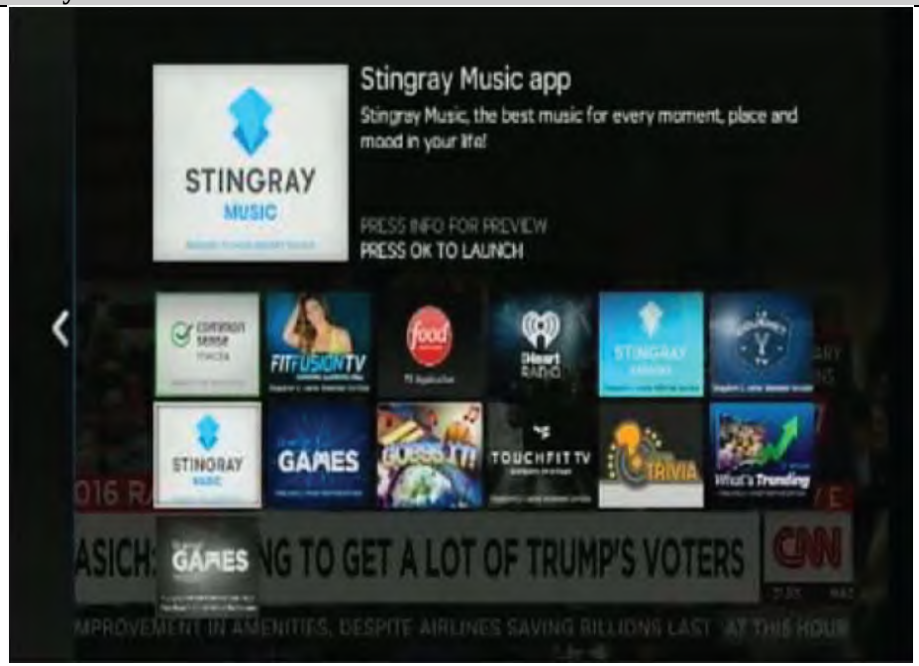
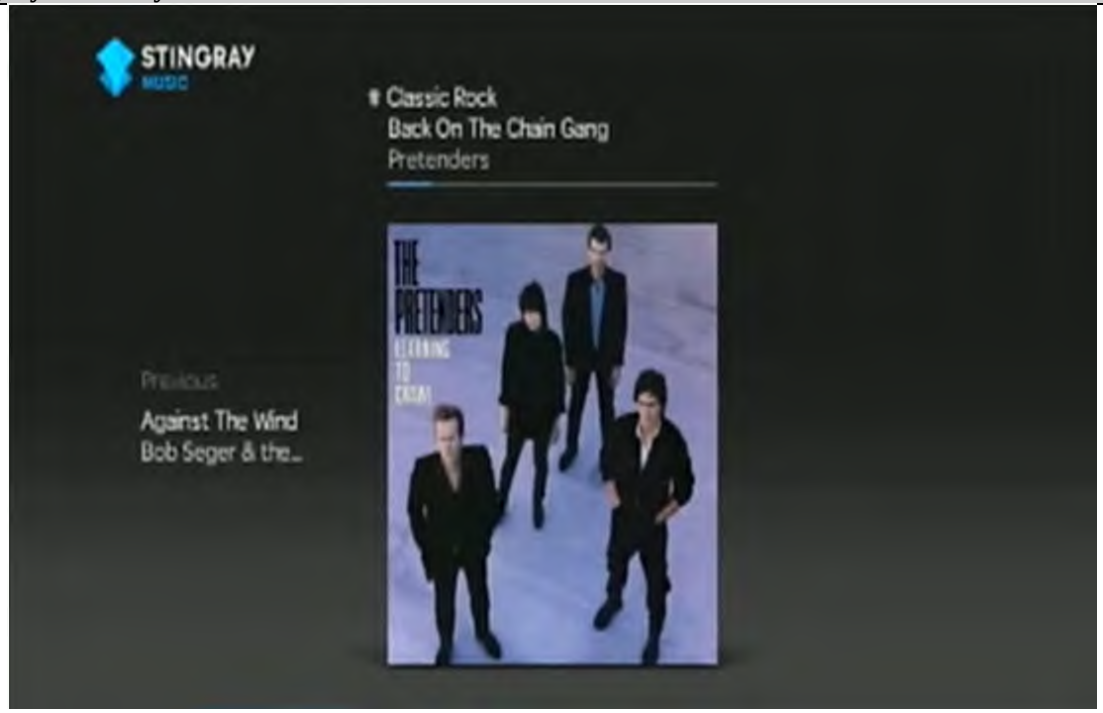
#	'602 Patent	Stingray Music System/Method
		

Exhibit 1: Stingray's Infringement of the '602 Patent

#	'602 Patent	Stingray Music System/Method
		

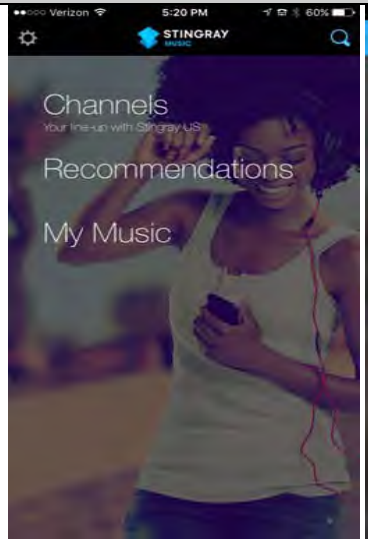
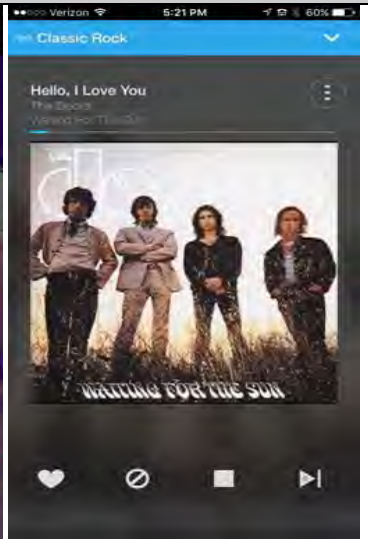
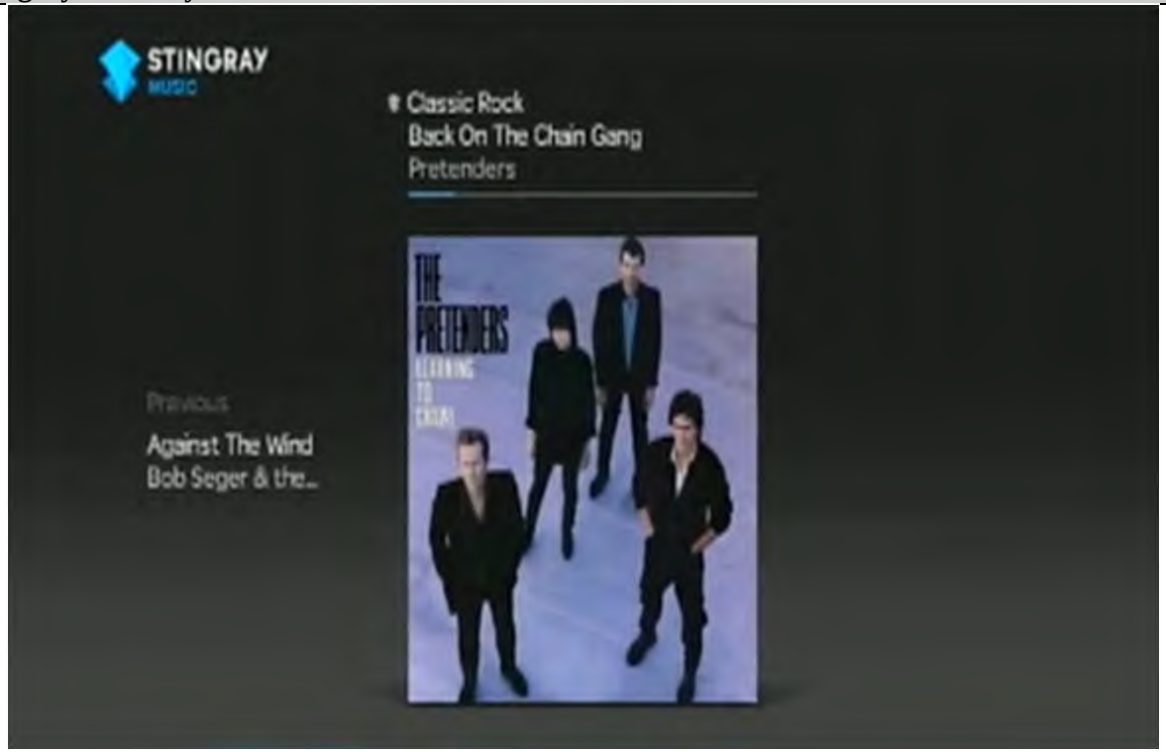
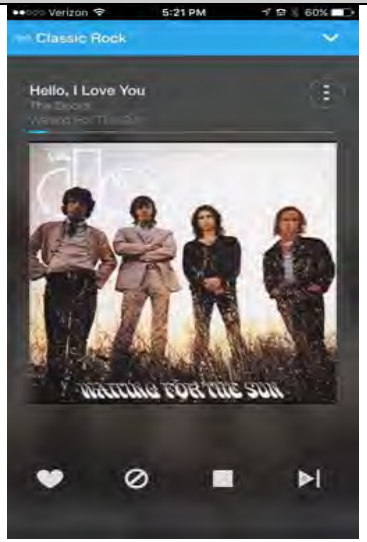
#	'602 Patent	Stingray Music System/Method
		 
1b	transmitting, from a first transmission system to a second transmission system, audio data corresponding to a sound recording; and	The Stingray Music Method transmits, from a first transmission system (*e.g.*, the Stingray UbiquiCAST broadcast system, including the UbiquiCAST music content origin server) to a second transmission system (*e.g.*, the AT&T U-verse® system, a cellular system, and/or a Local Area Network (LAN)/Wide Area Network (WAN) system), audio data corresponding to a sound recording (*e.g.*, audio data corresponding to the sound recording "Back on the Chain Gang" or "Hello, I Love You"). *See, e.g.*, Stingray Music Website, "Distribute Stingray Music," available at http://music.stingray.com/en_US/about/distribute (last accessed August 4, 2016) ("A UbiquiCAST server is installed at the head-end of our customers and comes pre-loaded with a library of content . . .") (MC-Stingray00119562).

Exhibit 1: Stingray's Infringement of the '602 Patent

#	'602 Patent	Stingray Music System/Method
		

#	'602 Patent	Stingray Music System/Method
		
1c	transmitting a data packet comprising a video image specification while the audio data is being transmitted, wherein the video image specification specifies one or more media asset identifiers, each of which identifies a media asset associated with the sound recording, said data packet	The Stingray Music Method transmits a data packet (*e.g.*, an HTML or XML file) comprising a video image specification (*e.g.*, specifying (i) the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image or (ii) the song title "Hello, I Love You," the artist name "The Doors," and the associated cover art image) while the audio data (*e.g.*, audio data corresponding to the sound recording "Back on the Chain Gang" or "Hello, I Love You") is being transmitted, wherein the video image specification specifies one or more media asset identifiers (*e.g.*, (i) an identifier of the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image or (ii) an identifier of the song title "Hello, I Love You," the artist name "The Doors," and the associated cover art image), each of which identify a media asset associated with the sound recording (*e.g.*, (i) the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image associated with the sound recording "Back on the Chain Gang" or (ii) the song title "Hello, I Love You," the artist name "The Doors," and the associated cover art image associated with the sound recording "Hello, I Love You"), said data packet further comprising sound recording information associated with the sound recording, the sound recording information comprising one or more of the title of the sound recording (*e.g.*, "Back on the Chain Gang" or "Hello, I Love You") and the name of the artist who recorded the sound recording (e.g., the "Pretenders" or

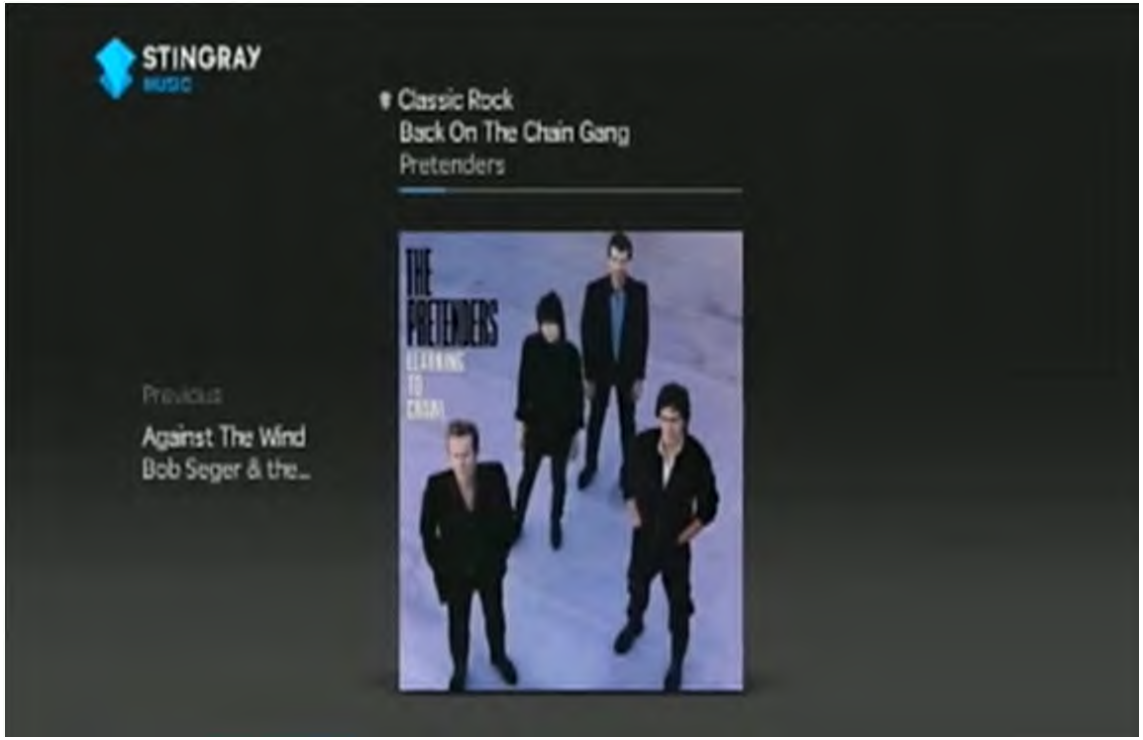
#	'602 Patent	Stingray Music System/Method
	further comprising sound recording information associated with the sound recording, the sound recording information comprising one or more of the title of the sound recording and the name of the artist who recorded the sound recording, wherein	"The Doors"). 

Exhibit 1: Stingray's Infringement of the '602 Patent

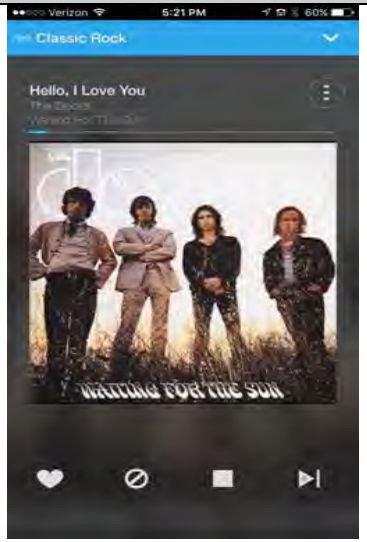
#	'602 Patent	Stingray Music System/Method
		
1d	the step of transmitting the data packet comprises transmitting the data packet to a system comprising a video image generator, wherein the video image generator is configured to generate a video image using the video image specification and	The Stingray Music Method transmits the data packet (*e.g.*, the HTML or XML file) to a system (*e.g.*, the UbiquiCAST broadcast system and/or the AT&T U-verse® system and/or the cellular system and/or a LAN/WAN system, including an end-user device running the Stingray Music app) comprising a video image generator, wherein the video image generator is configured to generate a video image (*e.g.*, (i) a video image including the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image or (ii) a video image including the song title "Hello, I Love You," the artist name "The Doors," and the associated cover art image) using the video image specification and the system is configured to provide the generated video image (*e.g.*, (i) the video image including the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image or (ii) the video image including the song title "Hello, I Love You," the artist name "The Doors," and the associated cover art image) to a device that is operable to display the video image to a user of the device (*e.g.*, a television or a mobile device).

Exhibit 1: Stingray's Infringement of the '602 Patent

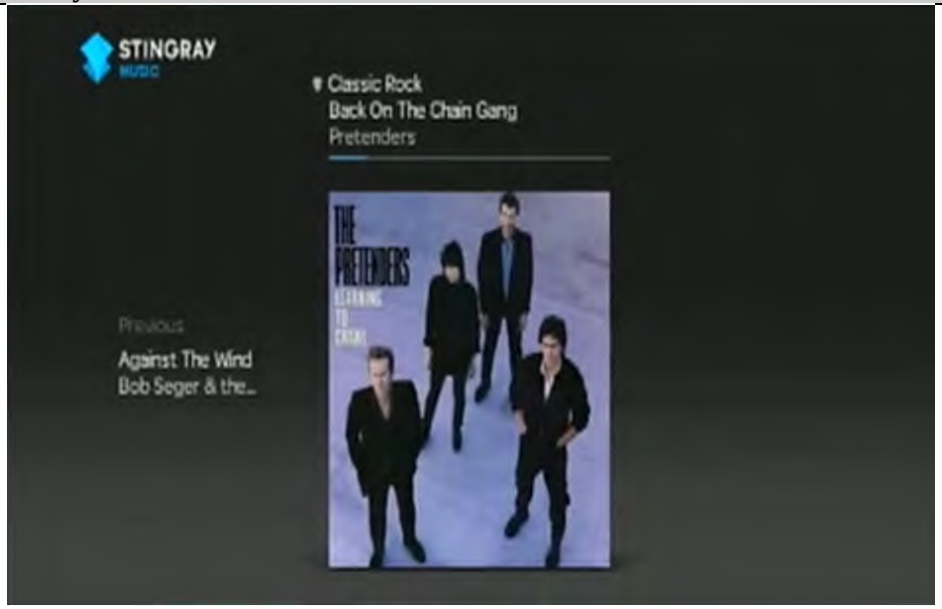
#	'602 Patent	Stingray Music System/Method
	the system is configured to provide the generated video image to a device that is operable to display the video image to a user of the device, and	

Exhibit 1: Stingray's Infringement of the '602 Patent

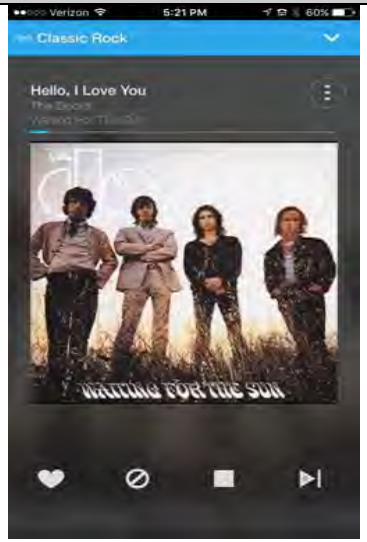
#	'602 Patent	Stingray Music System/Method
		
1e	wherein the video image generator is configured to generate the video image by retrieving the media assets identified in the video image specification.	The video image generator is configured to generate the video image (*e.g.*, (i) the video image including the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image or (ii) the video image including the song title "Hello, I Love You," the artist name "The Doors," and the associated cover art image) by retrieving the media assets (*e.g.*, the song title, the artist name, and the thumbnail cover art image associated with the sound recording "Back on the Chain Gang" or "Hello, I Love You") identified in the video image specification.

Exhibit 1: Stingray's Infringement of the '602 Patent

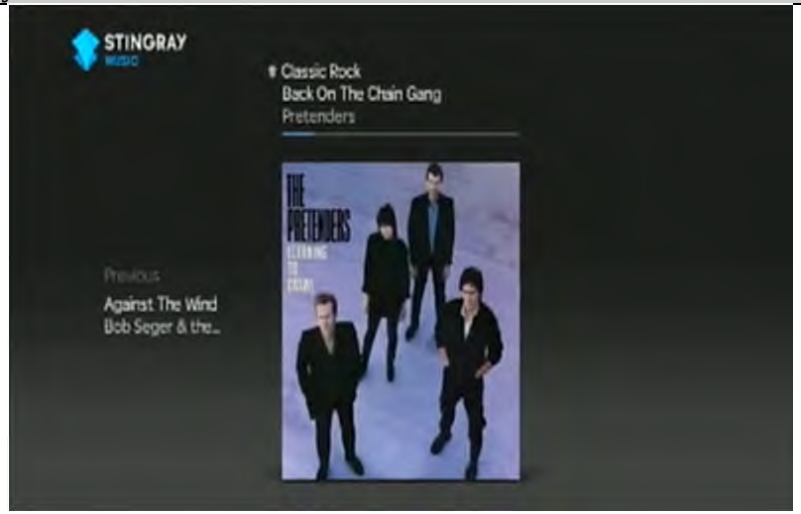
#	'602 Patent	Stingray Music System/Method
		 

Exhibit 1: Stingray's Infringement of the '602 Patent

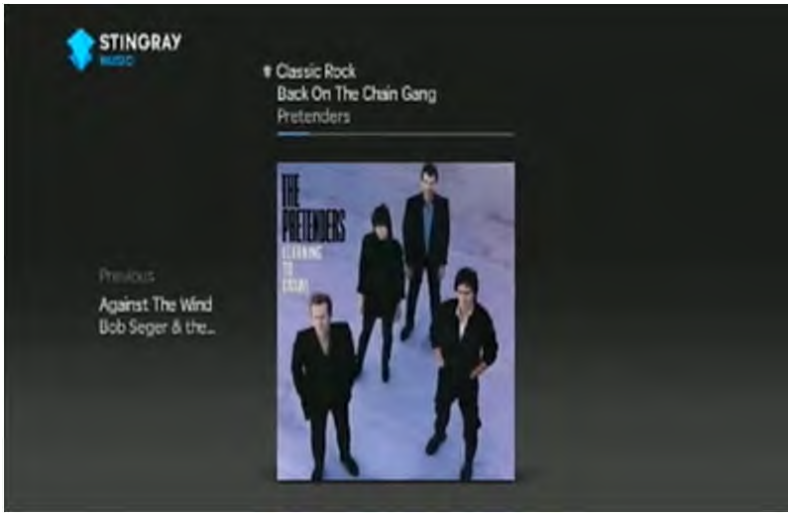
#	'602 Patent	Stingray Music System/Method
2a	2. The method of claim 1,	*See* claim 1, above.
2b	wherein the system comprises an audio/video receiver coupled to the audio/video device.	In the Stingray Music Method, the system comprises an audio/video receiver (*e.g.*, including an end-user device running the Stingray Music app) coupled to the audio/video device (*e.g.*, a television or mobile device). 

Exhibit 1: Stingray's Infringement of the '602 Patent

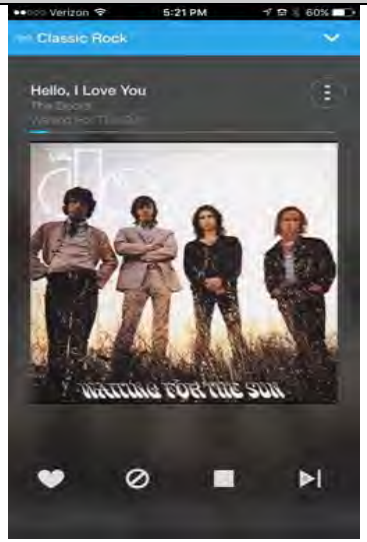
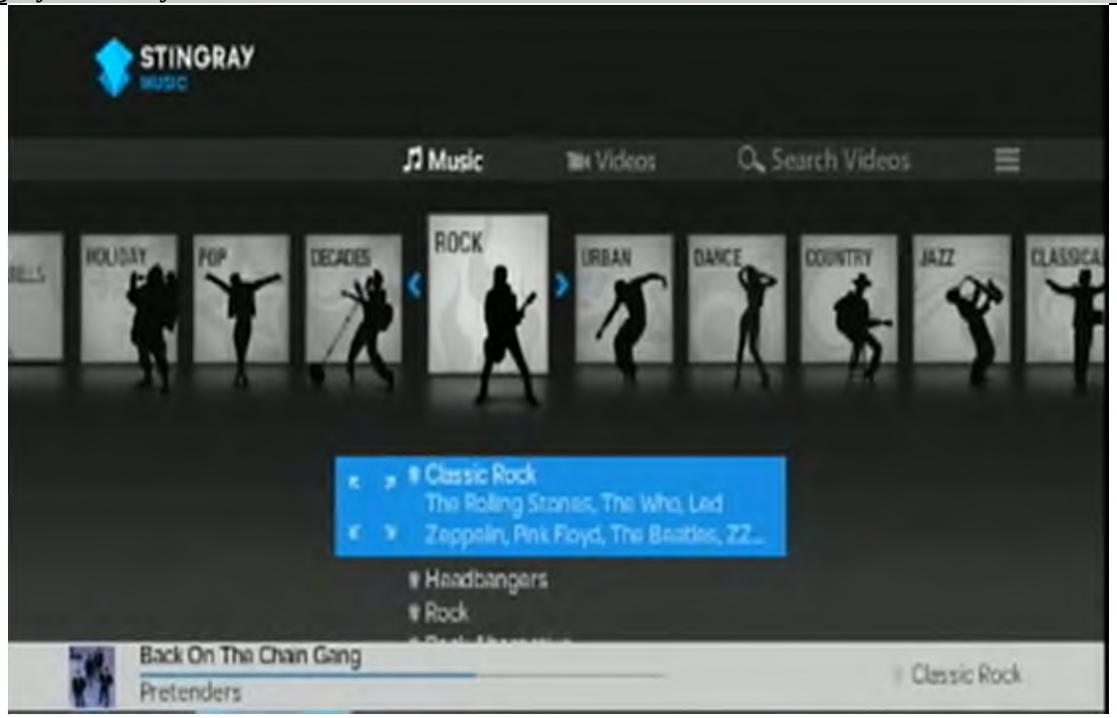
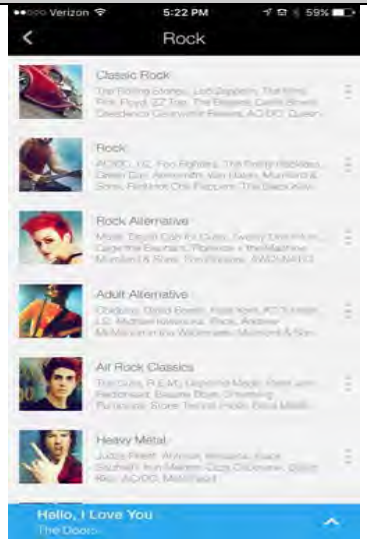
#	'602 Patent	Stingray Music System/Method
		
3a	3. The method of claim 1, further comprising:	*See* claim 1, above.
3b	after transmitting the first data packet to the system and while audio data corresponding to the sound recording is still being transmitted, transmitting a second data packet to the system, the second data packet	The Stingray Music Method, after transmitting the first data packet to the system and while audio data corresponding to the sound recording is still being transmitted (*e.g.*, audio data for the song "Back on the Chain Gang" or "Hello, I Love You"), transmits a second data packet (*e.g.*, an HTML or XML file) to the system, the second data packet comprises a video image specification that specifies a visual complement for the channel (*e.g.*, the data packet comprises a graphic visual complement for the Classic Rock channel).

Exhibit 1: Stingray's Infringement of the '602 Patent

#	'602 Patent	Stingray Music System/Method
	comprises a video image specification that specifies a visual complement for the channel.	

#	'602 Patent	Stingray Music System/Method
		
4a	The method of claim 1, further comprising:	*See* claim 1, above.
4b	selecting the sound recording prior to transmitting, from the first transmission to the second transmission system, said audio data; and	The Stingray Music Method selects the sound recording (*e.g.*, the recording for the song "Back on the Chain Gang" or "Hello, I Love You") prior to transmitting, from the first transmission system (*e.g.*, the Stingray UbiquiCAST broadcast system, including the UbiquiCAST music content origin server) to a second transmission system (*e.g.*, the AT&T U-verse® system and/or the cellular system and/or a LAN/WAN system), said audio data (*e.g.*, for the song "Back on the Chain Gang" or "Hello, I Love You").
4c	in response to selecting said sound recording,	The Stingray Music Method, in response to selecting said sound recording (*e.g.*, the recording for the song "Back on the Chain Gang" or "Hello, I Love You"), transmits to a video subsystem (*e.g.*, in the UbiquiCAST broadcast infrastructure and/or the AT&T U-verse® system and/or the end-user device

#	'602 Patent	Stingray Music System/Method
	transmitting to a video subsystem a trigger message, wherein the trigger message comprises an identifier associated with said selected sound recording.	running the Stingray Music app) a trigger message, wherein the trigger message comprises an identifier associated with said selected sound recording (*e.g.*, a message with identifier for the recording for the song "Back on the Chain Gang" or "Hello, I Love You").
5a	The method of claim 4,	*See* claim 4, above.
5b	wherein the video subsystem is configured to generate a video image specification based, at least in part, on pre-defined configuration data and information included in the trigger message.	In the Stingray Music Method, the video subsystem is configured to generate a video image specification (*e.g.*, a specification of a thumbnail cover art image, sound recording title, and recording artist name to be displayed in a video image associated with the sound recording "Back on the Chain Gang" or "Hello, I Love You") based, at least in part, on pre-defined configuration data (*e.g.*, display requirements) and information included in the trigger message (*e.g.*, the identifier for the recording for the song "Back on the Chain Gang" or "Hello, I Love You"). *See, e.g.*, Stingray Music website, Support/FAQ, available at music.stingray.com/en_US/about/support (last accessed August 4, 2016) ("Most distributors offer the on-screen display that allows you to see the information about the song that is currently playing, such as the title of the piece, the name of the performer or group, the title of the CD, the name of the record label and the reference number and also the composer or other related information.") (MC-Stingray00119565).

Exhibit 1: Stingray's Infringement of the '602 Patent

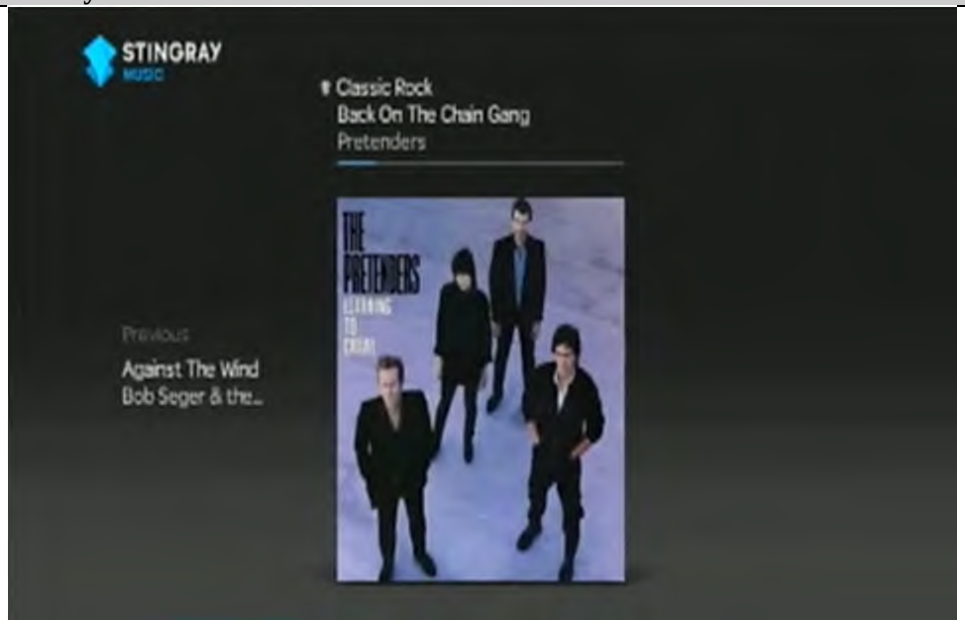
#	'602 Patent	Stingray Music System/Method
		

Exhibit 1: Stingray's Infringement of the '602 Patent

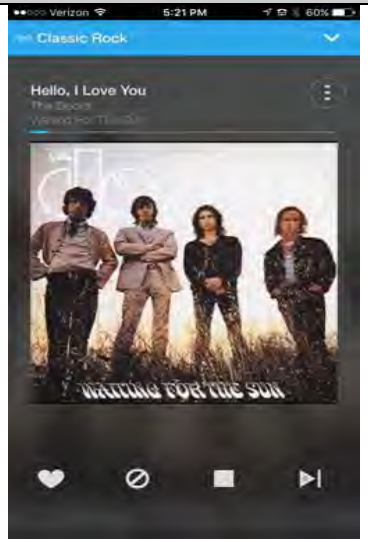
#	'602 Patent	Stingray Music System/Method
		
6a	The method of claim 5,	*See* claim 5, above.
6b	wherein the video subsystem is configured to generate the video image specification in response to receiving the trigger message.	In the Stingray Music Method, the video subsystem is configured to generate the video image specification (*e.g.*, a specification of a thumbnail cover art image, sound recording title, and recording artist name to be displayed in a video image associated with the sound recording "Back on the Chain Gang" or "Hello, I Love You") in response to receiving the trigger message.

Exhibit 1: Stingray's Infringement of the '602 Patent

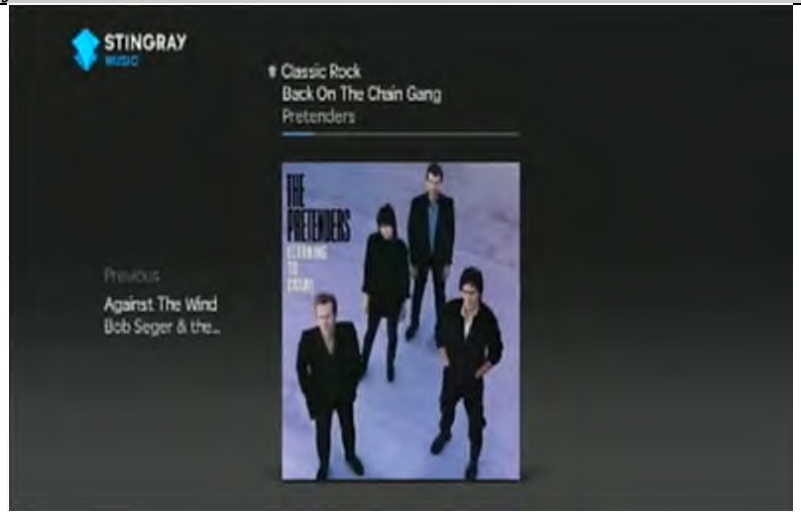
#	'602 Patent	Stingray Music System/Method
		 

Exhibit 1: Stingray's Infringement of the '602 Patent

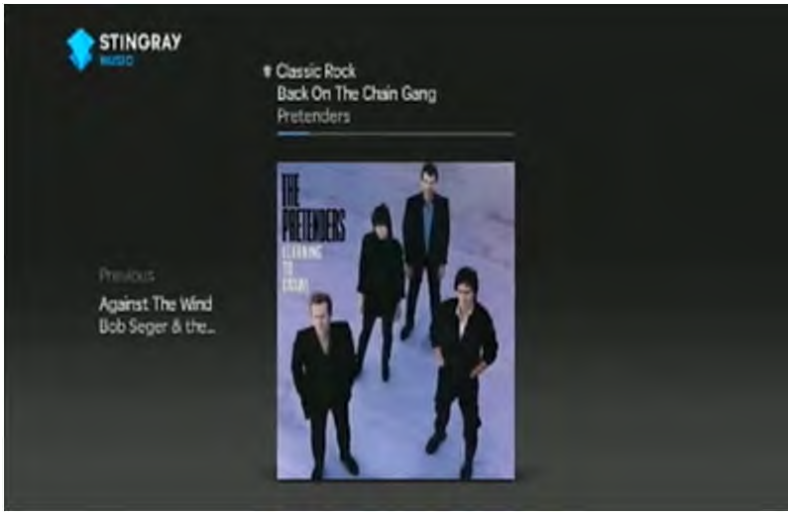
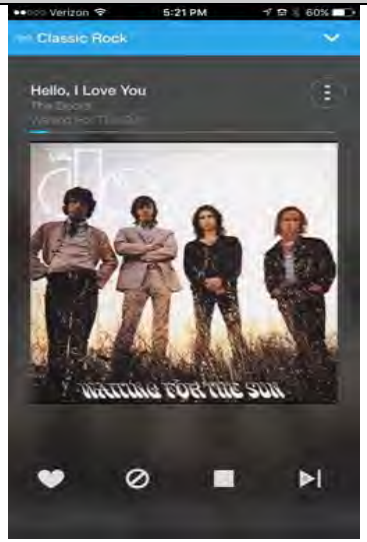
#	'602 Patent	Stingray Music System/Method
7a	The method of claim1,	*See* claim 1, above.
7b	wherein, for at least one media asset identifier specified by the video image specification, the video image specification specifies a screen location that is associated with said media asset identifier.	In the Stingray Music Method, for at least one media asset identifier specified by the video image specification (*e.g.*, a specification of a thumbnail cover art image, sound recording title, and recording artist name to be displayed in a video image associated with the sound recording "Back on the Chain Gang" or "Hello, I Love You"), the video image specification specifies a screen location (*e.g.*, center of the screen) that is associated with said media asset identifier. 

Exhibit 1: Stingray's Infringement of the '602 Patent

#	'602 Patent	Stingray Music System/Method
		
8a	8. A system for providing a visual complement to an audio service, the system comprising:	The Stingray Music System, which includes the Stingray Music TV app that is offered on the AT&T's U-verse® platform and/or the Stingray Music mobile app that is offered on Apple's iOS platform, is a system for providing a visual complement (*e.g.*, providing a song title, artist name, and/or album cover image as a visual complement to a song) to an audio service (*e.g.*, the streaming music channels available using the Stingray Music TV app on AT&T U-verse® or the Stingray Music mobile app on Apple's iOS platform). For example, the Stingray Music System provides access to streaming audio channels. *See, e.g.*, "Stingray Music Brings All Good Vibes to AT&T U-verse Customers," (Oct. 29, 2014), available at about.att.com/story/stingray_music_app_on_uverse_tv.html (last accessed Aug. 4, 2016) ("the new Stingray Music app, available at no additional charge, will have more than 100 streaming music channels") (MC-Stingray00119568); Stingray Music Website, "Continuous music service," available at http://music.stingray.com/en_US/about/baseService (last accessed Aug. 4, 2016) ("The Stingray Music continuous music network provides its listeners with a selection of close to fifty music channels, all commercial-free and uninterrupted, that cover a large variety of music genres, from rock to pop to jazz, to classical or international, delivered in pristine quality digital audio.") (MC-Stingray00119561); Stingray Music Website, "Channels," available at http://music.stingray.com/en_US/channels (last accessed Aug. 4, 2016) ("Continuous, commercial-free

#	'602 Patent	Stingray Music System/Method
		music includes a complete selection of channels covering all popular music genres.") (MC-Stingray00119558).

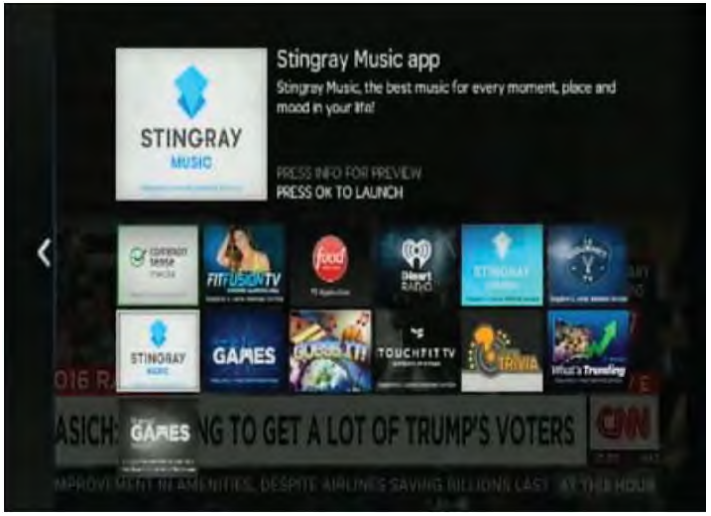
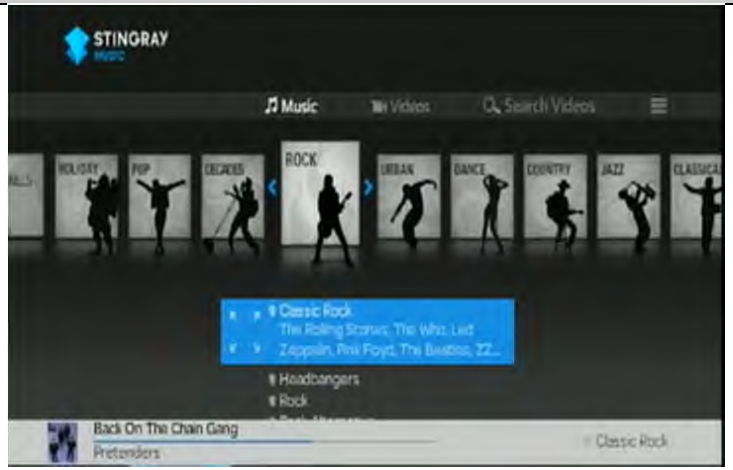
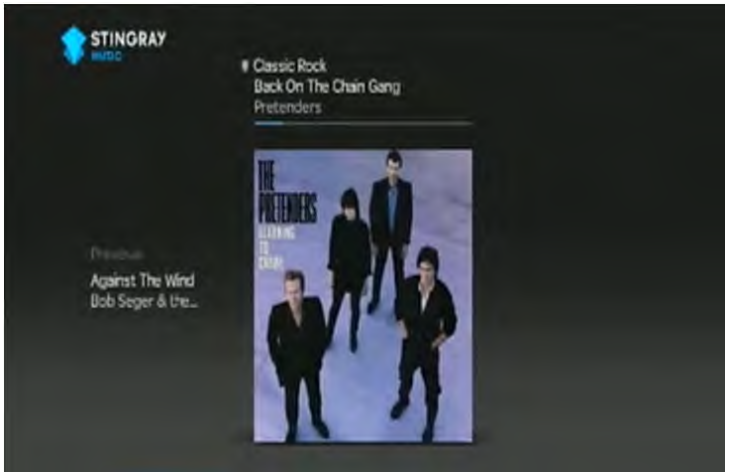


Exhibit 1: Stingray's Infringement of the '602 Patent

#	'602 Patent	Stingray Music System/Method
		 

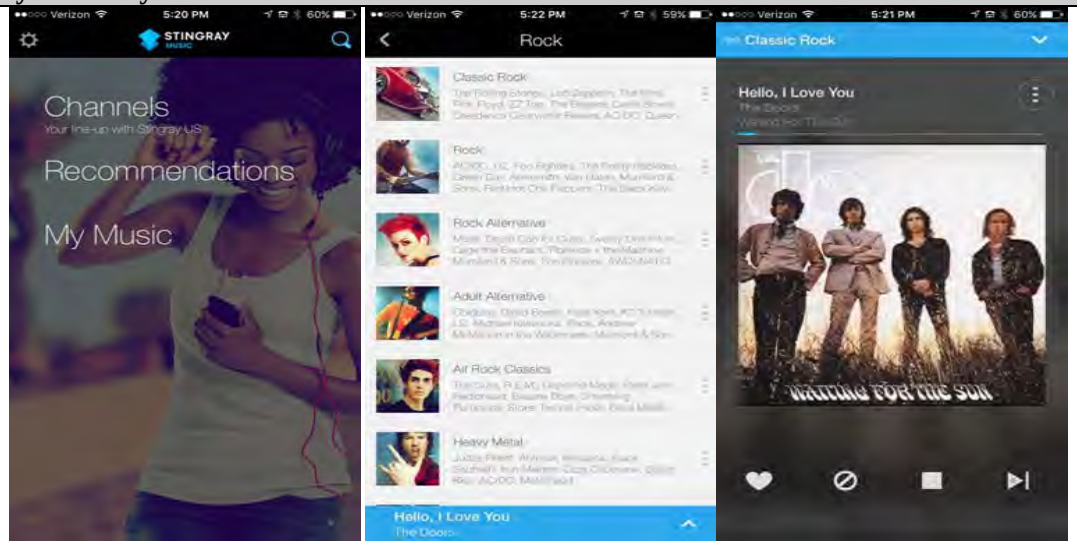
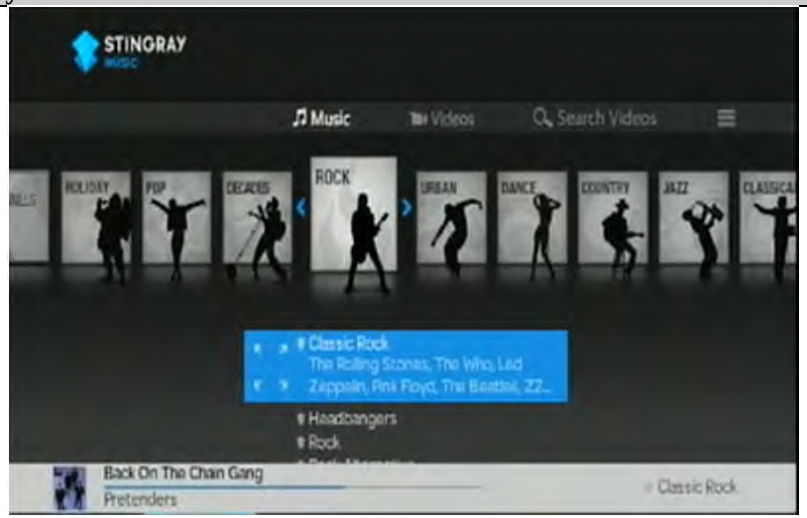
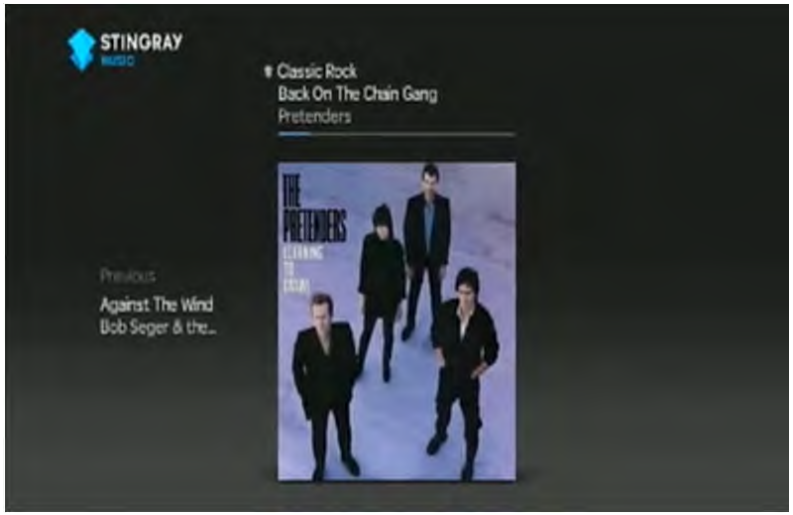
#	'602 Patent	Stingray Music System/Method
		
8b	an audio subsystem configured to store a playlist for an audio channel of the audio service; and	The Stingray Music System includes an audio subsystem (*e.g.*, in the UbiquiCAST broadcast infrastructure and/or the AT&T U-verse® system and/or the end-user device running the Stingray Music app) configured to store a playlist (*e.g.*, a playlist including the sound recording "Back on the Chain Gang" or "Hello, I Love You") for an audio channel (*e.g.*, a classic rock audio channel) of the audio service. *See*, *e.g.*, Stingray Music Website "Distribute Stingray Music," available at http://music.stingray.com/en_US/about/distribute (last accessed Aug. 4, 2016) ("A UbiquiCAST server is installed at the headend of our customers and comes preloaded with a library of content. New content and program scheduling data is uploaded by secure VPN link by the Stingray Music programmers directly to each UbiquiCAST.") (MC-Stingray00119562).

Exhibit 1: Stingray's Infringement of the '602 Patent

#	'602 Patent	Stingray Music System/Method
		 

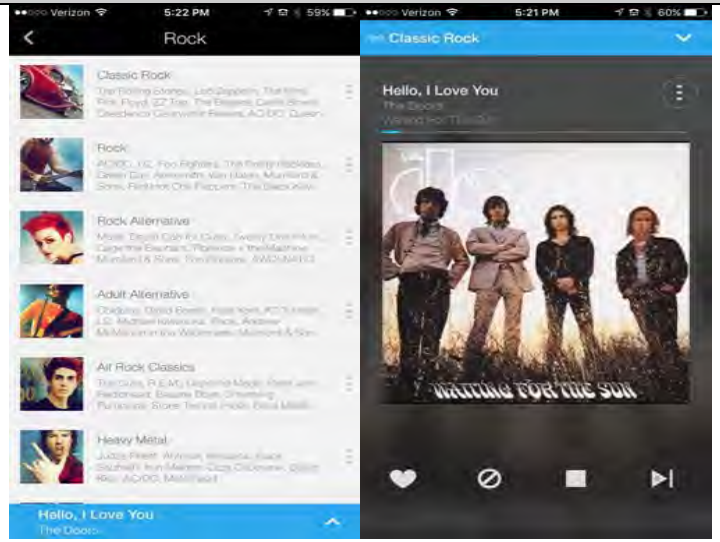
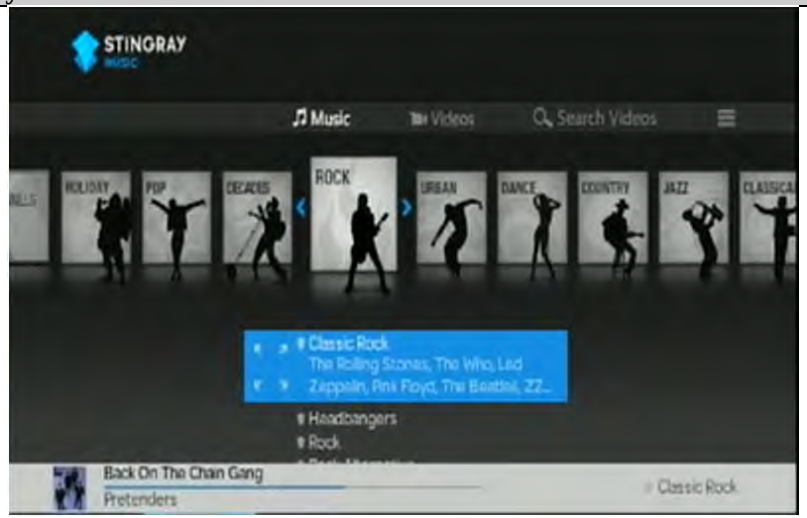
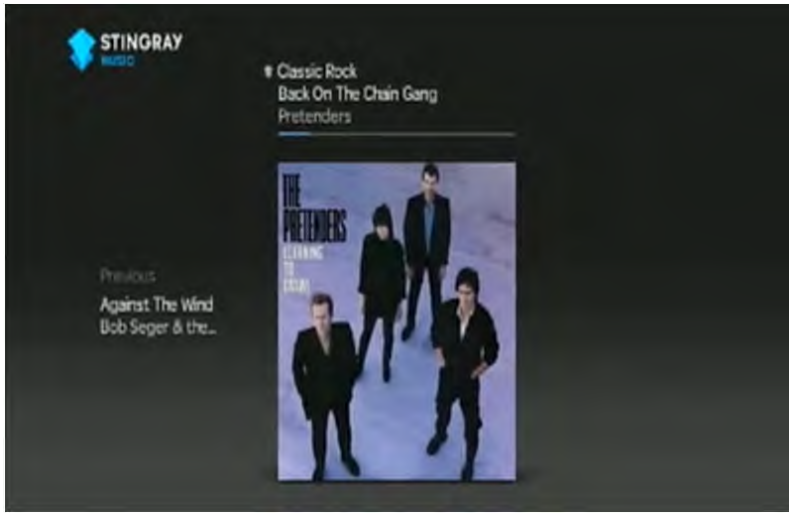
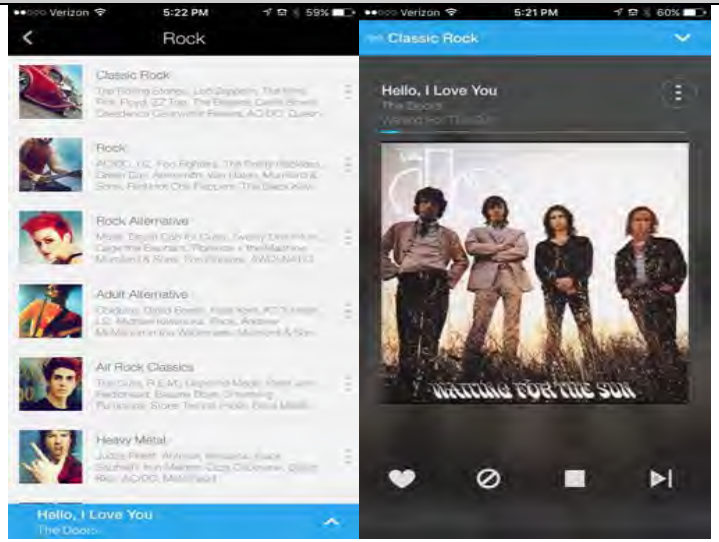
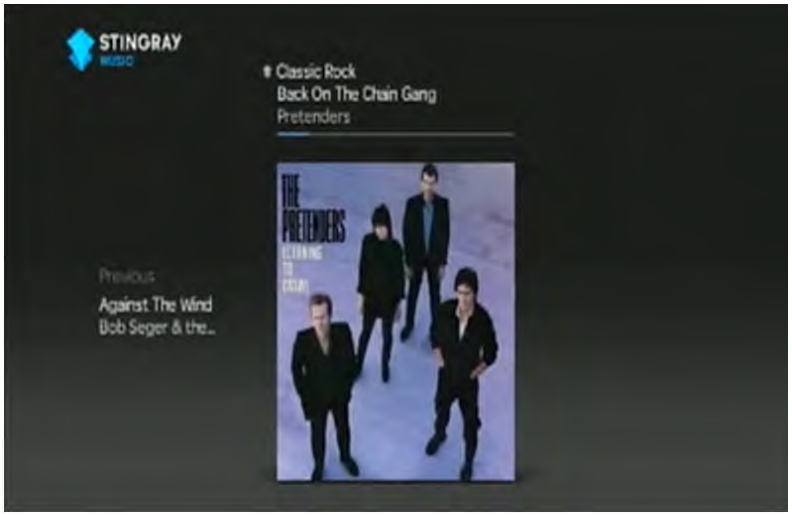
#	'602 Patent	Stingray Music System/Method
		
8c	a first transmission system configured to transmit to a second transmission system audio data corresponding to a sound recording specified in the playlist; and	The Stingray Music System includes a first transmission system (*e.g.*, the Stingray UbiquiCAST broadcast system, including the UbiquiCAST music content origin server). The Stingray Music System also includes a second transmission system (*e.g.*, the AT&T U-verse® system, a cellular network system, and/or a WAN/LAN system). The first transmission system is configured to transmit to the second transmission system audio data corresponding to a sound recording (*e.g.*, audio data corresponding to a sound recording for the song "Back on the Chain Gang" or "Hello, I Love You") specified in the playlist (*e.g.*, the playlist for the classic rock linear audio channel).

Exhibit 1: Stingray's Infringement of the '602 Patent

#	'602 Patent	Stingray Music System/Method
		 

#	'602 Patent	Stingray Music System/Method
		
8d	a video image generator configured to:	The Stingray Music System includes a video image generator (*e.g.*, to generate (i) the video image including the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image or (ii) the video image including the song title "Hello, I Love You," the artist name "The Doors," and the associated cover art image).
8e	i) receive, while the sound recording is being transmitted, a video image specification that specifies one or more media asset identifiers that identify one or more media assets, the one or more	In the Stingray Music System, the video image generator is configured to i) receive, while the sound recording (*e.g.*, the sound recording for the song "Back on the Chain Gang" or "Hello, I Love You") is being transmitted, a video image specification (*e.g.*, a specification of a thumbnail cover art image, sound recording title, and recording artist name to be displayed in a video image associated with the sound recording "Back on the Chain Gang" or "Hello, I Love You") that specifies one or more media asset identifiers (*e.g.*, identifiers for a thumbnail cover art image, a sound recording title, and recording artist name) that identify one or more media assets (*e.g.*, a thumbnail cover art image, a sound recording title, and recording artist name for the song "Back on the Chain Gang" or "Hello, I Love You"). The one or more media assets (*e.g.*, the thumbnail cover art image, the sound recording title, and recording artist name) are associated with the sound recording (*e.g.*, the sound recording for the song "Back on the Chain Gang" or "Hello, I Love You") that is being transmitted. The video image

#	'602 Patent	Stingray Music System/Method
	media assets being associated with the sound recording that is being transmitted, and sound recording information associated with the sound recording, the sound recording information comprising one or more of the title of the sound recording and the name of the artist who recorded the sound recording, and	specification (*e.g.*, the specification of a thumbnail cover art image, sound recording title, and recording artist name to be displayed in a video image associated with the sound recording "Back on the Chain Gang" or "Hello, I Love You") also specifies sound recording information associated with the sound recording, the sound recording information comprising one or more of the title of the sound recording (*e.g.*, "Back on the Chain Gang" or "Hello, I Love You") and the name of the artist (*e.g.*, the "Pretenders" or "The Doors") who recorded the sound recording. 

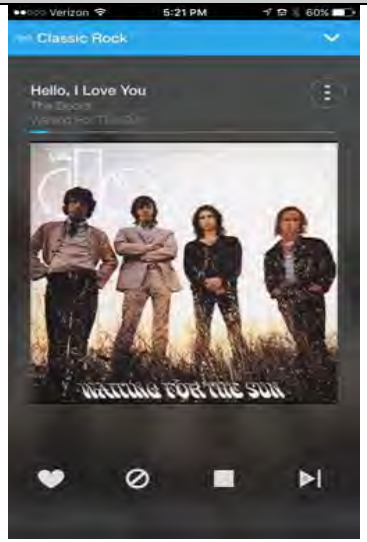
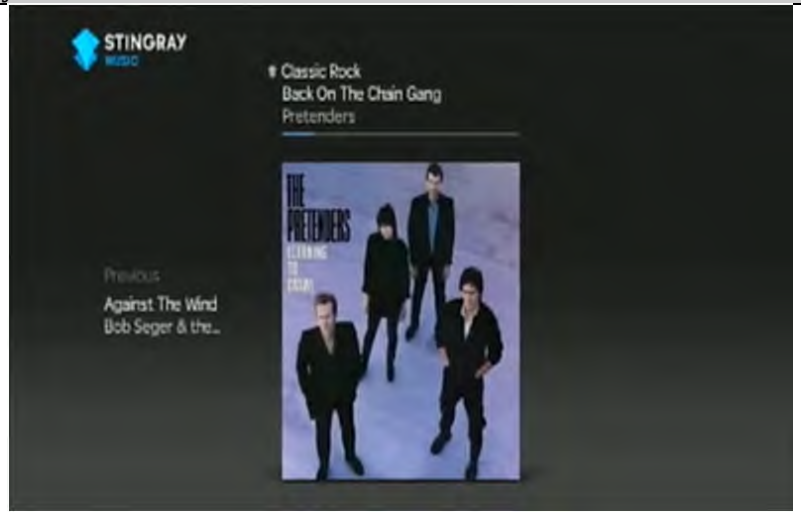
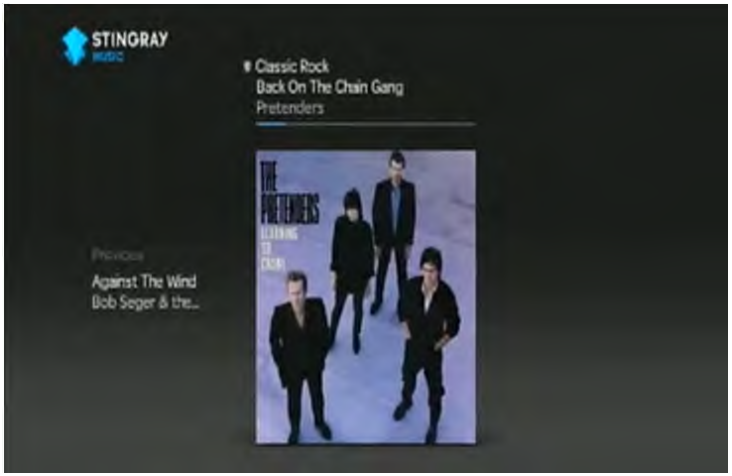
#	'602 Patent	Stingray Music System/Method
		
8f	ii) generate a video image using the media assets identified in the video image specification, wherein	In the Stingray Music System, the video image generator is configured to generate a video image using the media assets identified in the video image specification (*e.g.*, the video image including (i) the song title "Back on the Chain Gang," the artist name "Pretenders," and the specified associated cover art image or (ii) the song title "Hello, I Love You," the artist name "The Doors," and the specified associated cover art image).

Exhibit 1: Stingray's Infringement of the '602 Patent

#	'602 Patent	Stingray Music System/Method
		 

#	'602 Patent	Stingray Music System/Method
8g	the first transmission system is further configured to transmit to the second transmission system the generated video image multiplexed with the audio data corresponding to the sound recording, wherein	In the Stingray Music System, the first transmission system is further configured to transmit to the second transmission system the generated video image (*e.g.*, the video image (i) including the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image or (ii) including the song title "Hello, I Love You," the artist name "The Doors," and the associated cover art image) multiplexed with the audio data corresponding to the sound recording (*e.g.*, the audio data corresponding to the sound recording "Back on the Chain Gang" or "Hello, I Love You"). 

#	'602 Patent	Stingray Music System/Method
		
8h	the system further comprises a video subsystem,	The Stingray Music System includes a video subsystem (*e.g.*, in the UbiquiCAST broadcast infrastructure and/or the AT&T U-verse® system and/or the end-user device running the Stingray Music app).
8i	the audio subsystem is configured to i) retrieve the audio data corresponding to the sound recording prior to the first transmission system transmitting said audio data and ii) provide to the video	In the Stingray music system, the audio subsystem of the Stingray Music System is configured to i) retrieve the audio data corresponding to the sound recording (*e.g.*, the audio data corresponding to the sound recording "Back on the Chain Gang" or "Hello, I Love You") prior to the first transmission system transmitting said audio data and ii) provide to the video subsystem of the Stingray music content origin server a trigger message comprising an identifier associated with said sound recording (*e.g.*, an identifier associated with the sound recording "Back on the Chain Gang" or "Hello, I Love You").

Exhibit 1: Stingray's Infringement of the '602 Patent

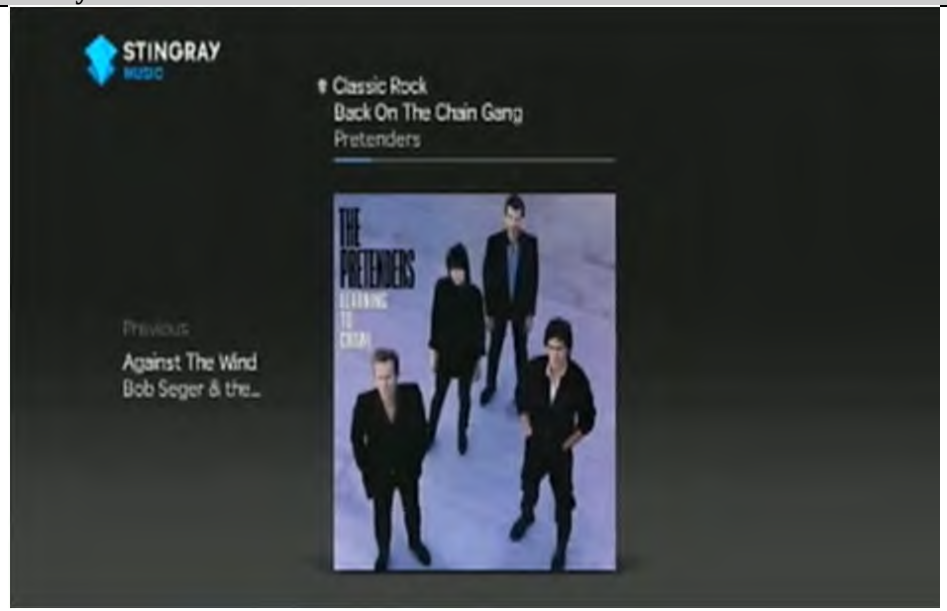
#	'602 Patent	Stingray Music System/Method
	subsystem a trigger message comprising an identifier associated with said sound recording.	

Exhibit 1: Stingray's Infringement of the '602 Patent

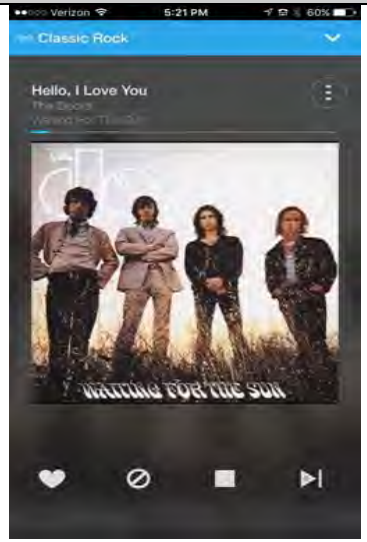
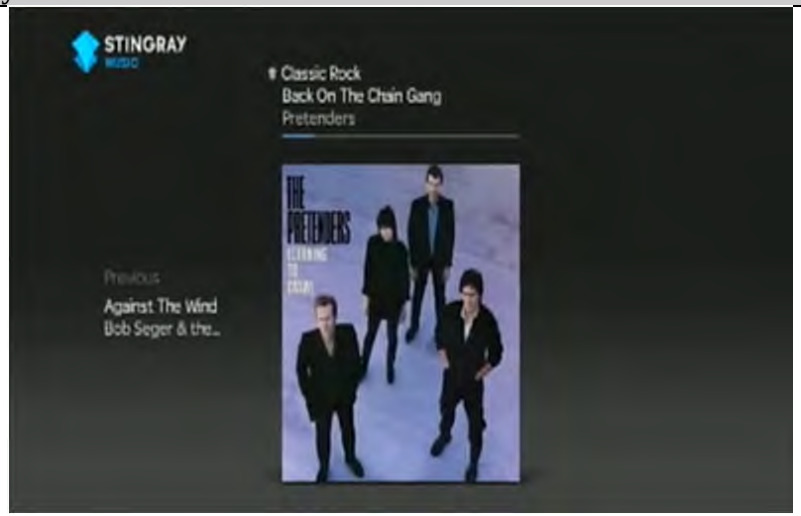
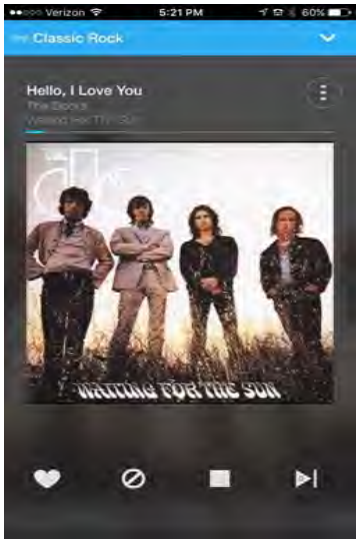
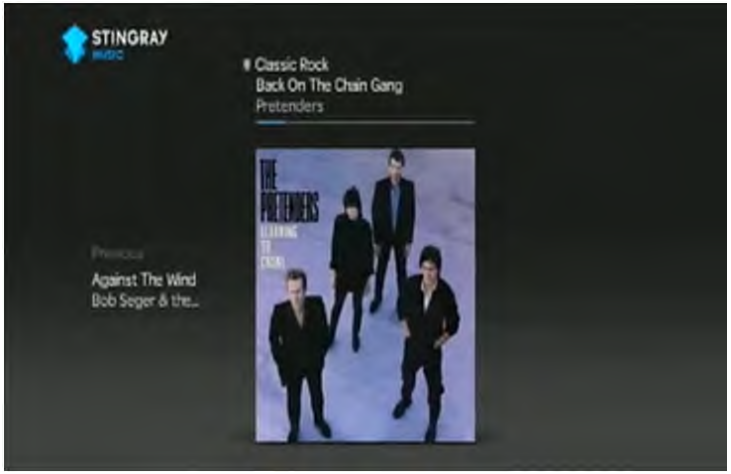
#	'602 Patent	Stingray Music System/Method
		
9a	The system of claim 8,	*See* claim 8, above.
9b	wherein the video subsystem is configured to i) generate the video image specification based, at least in part, on pre-defined configuration data and information included in the trigger message and ii) provide the video image	In the Stingray Music System, the video subsystem is configured to generate the video image specification (*e.g.*, a specification of a thumbnail cover art image, sound recording title, and recording artist name to be displayed in a video image associated with the sound recording "Back on the Chain Gang" or "Hello, I Love You") based, at least in part, on-predefined configuration data (*e.g.*, display requirements) and information included in the trigger message (*e.g.*, the identifier for the recording for the song "Back on the Chain Gang" or "Hello, I Love You") and provide the video image specification to the video image generator. *See*, *e.g.*, Stingray Music website, Support/FAQ, available at music.stingray.com/en_US/about/support (last accessed August 4, 2016) ("Most distributors offer the on-screen display that allows you to see the information about the song that is currently playing, such as the title of the piece, the name of the performer or group, the title of the CD, the name of the record label and the reference number and also the composer or other related information.") (MC-Stingray00119565).

Exhibit 1: Stingray's Infringement of the '602 Patent

#	'602 Patent	Stingray Music System/Method
	specification to the video image generator.	 

#	'602 Patent	Stingray Music System/Method
10a	The system of claim 9,	*See* claim 9, above.
10b	wherein the video subsystem is configured to generate the video image specification in response to receiving the trigger message.	In the Stingray Music System, the video subsystem is configured to generate the video image specification (*e.g.*, a specification of a thumbnail cover art image, sound recording title, and recording artist name to be displayed in a video image associated with the sound recording "Back on the Chain Gang" or "Hello, I Love You") in response to receiving the trigger message. 

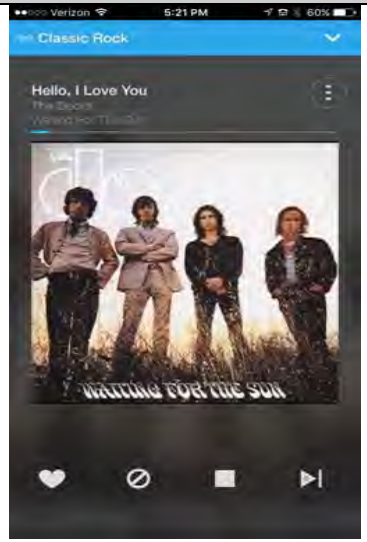
#	'602 Patent	Stingray Music System/Method
		
11a	The system of claim 8,	*See* claim 8, above.
11b	wherein, for at least one media asset identifier specified by the video image specification, the video image specification specifies a screen location that is associated with said media asset identifier.	In the Stingray Music System, for at least one media asset identifier specified by the video image specification (*e.g.*, a specification of a thumbnail cover art image, sound recording title, and recording artist name to be displayed in a video image associated with the sound recording "Back on the Chain Gang" or "Hello, I Love You"), the video image specification specifies a screen location (*e.g.*, center of the screen) that is associated with said media asset identifier.

Exhibit 1: Stingray's Infringement of the '602 Patent

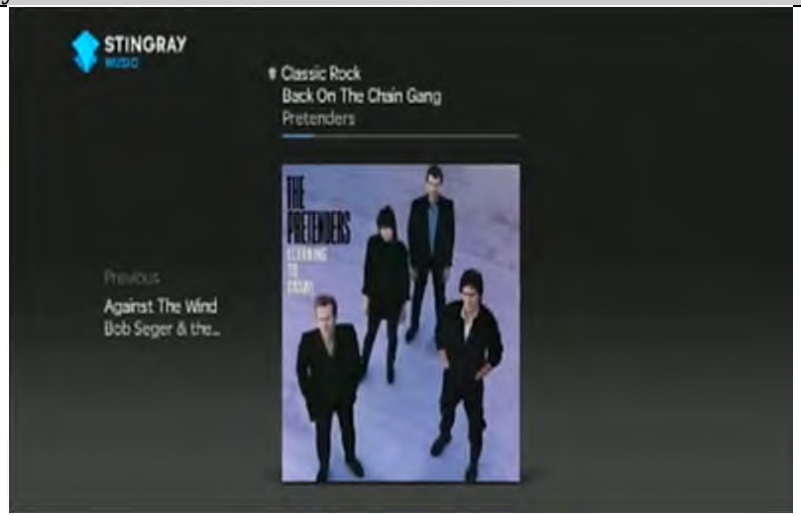
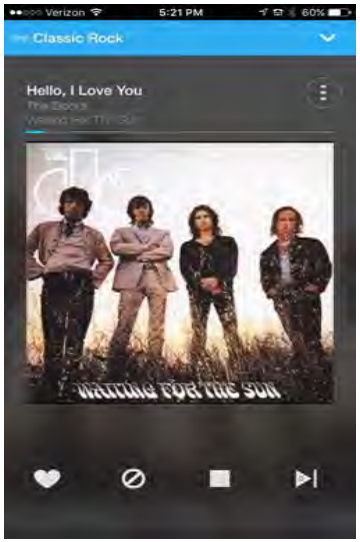
#	'602 Patent	Stingray Music System/Method
		 

EXHIBIT 2

Stingray's Infringement of the '245 Patent

UNITED STATES PATENT NO. 9,357,245 ("the '245 Patent")

This portion of Plaintiff's infringement contentions refers to the Stingray Music TV app that is offered on the AT&T's U-verse® platform and the Stingray Music mobile app that is offered on Apple's iOS platform as exemplary. These contentions apply to all similar Stingray Music products and services as offered on other platforms[1] (collectively the "Stingray Music System/Method").

#	'245 Patent	Stingray Music System/Method
1a	1. A method for providing a visual complement to an audio stream, comprising:	The Stingray Music Method, using the Stingray Music TV app on AT&T's U-verse® platform and/or the Stingray Music mobile app on the iOS platform, is a method for providing a visual complement to an audio stream (*e.g.*, providing a song title, artist name, and/or album cover image as a visual complement to a song). 

[1] These platforms include, for example, cable operator, satellite, Internet Protocol television (IPTV), mobile, and/or website platforms.

Exhibit 2: Stingray's Infringement of the '245 Patent

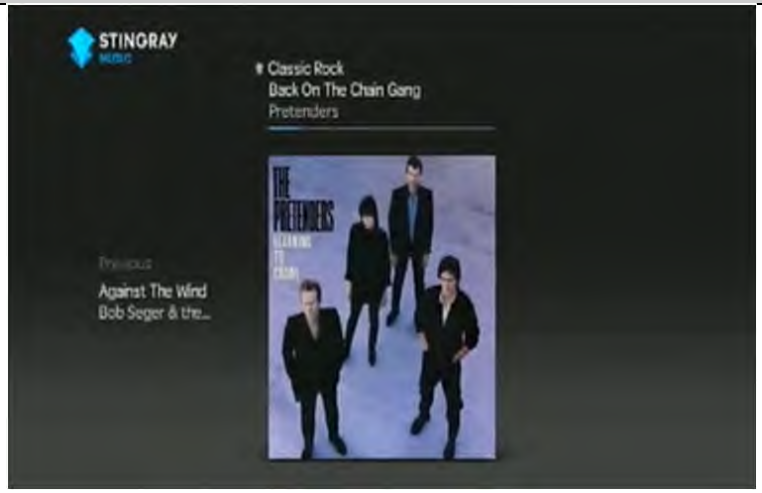
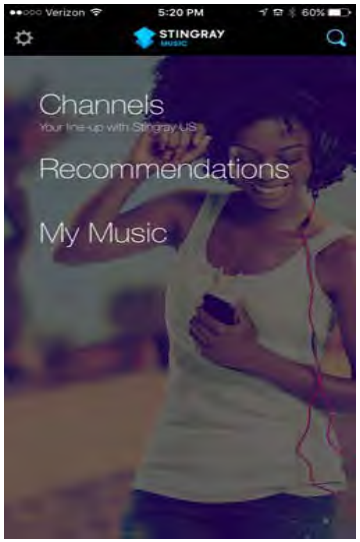
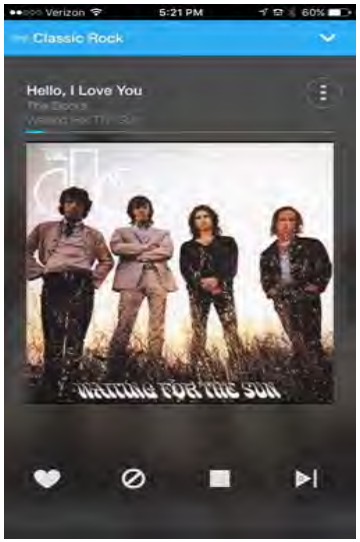
#	'245 Patent	Stingray Music System/Method
		  

Exhibit 2: Stingray's Infringement of the '245 Patent

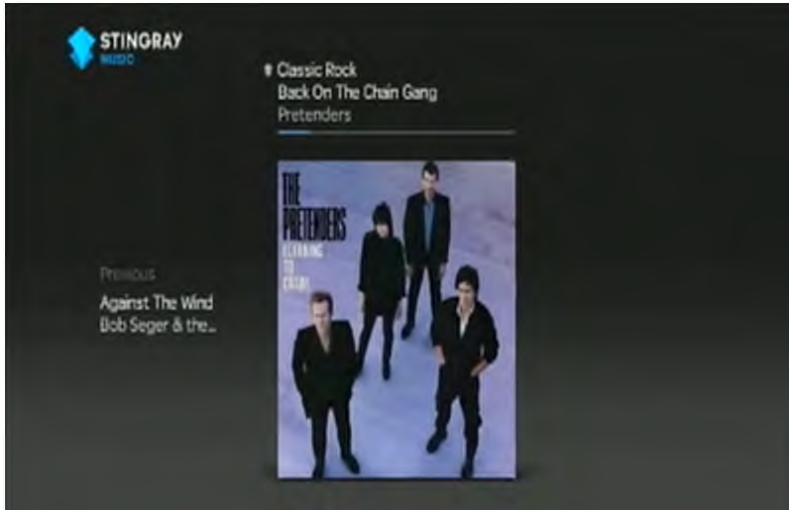
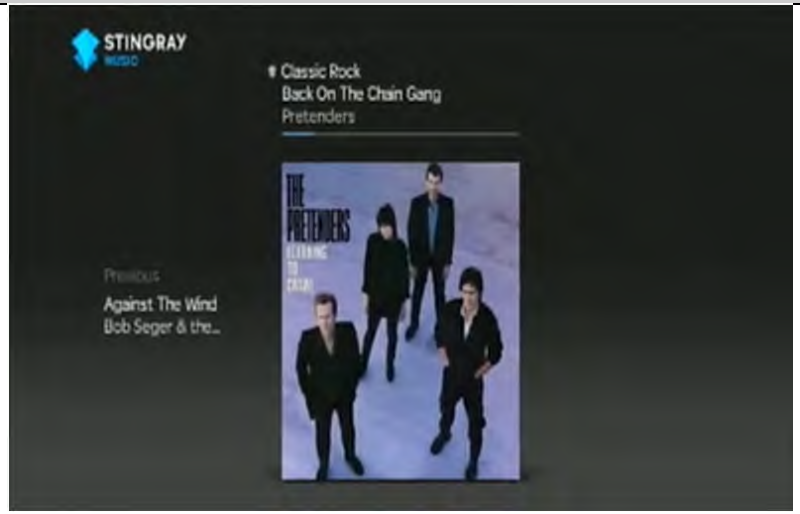
#	'245 Patent	Stingray Music System/Method
1b	transmitting, from a first transmission system to a second transmission system, audio data corresponding to a selected song; and	The Stingray Music Method transmits, from a first transmission system (*e.g.*, the Stingray UbiquiCAST broadcast system, including the UbiquiCAST music content origin server) to a second transmission system (*e.g.*, the AT&T U-verse® system, the cellular system, and/or a LAN/WAN system), audio data corresponding to a selected song (*e.g.*, audio data corresponding to the selected song "Back on the Chain Gang" or "Hello, I Love You"). 

Exhibit 2: Stingray's Infringement of the '245 Patent

#	'245 Patent	Stingray Music System/Method
		
1c	transmitting a data packet that was generated using an identifier identifying the selected song, wherein the data packet includes a media asset identifier identifying a media asset and further includes song information associated with	The Stingray Music Method transmits a data packet (*e.g.*, an HTML or XML file) that was generated using an identifier identifying the selected song (*e.g.*, the song "Back on the Chain Gang" or "Hello, I Love You"), wherein the data packet includes a media asset identifier identifying a media asset (*e.g.*, a thumbnail cover art image for the song "Back on the Chain Gang" or "Hello, I Love You") and further includes song information associated with the selected song, the song information comprising the title of the song (*e.g.*, "Back on the Chain Gang" or "Hello, I Love You") and the name of the artist who recorded the song (*e.g.*, the "Pretenders" or "The Doors").

#	'245 Patent	Stingray Music System/Method
	the selected song, the song information comprising the title of the song and the name of the artist who recorded the song, wherein	 

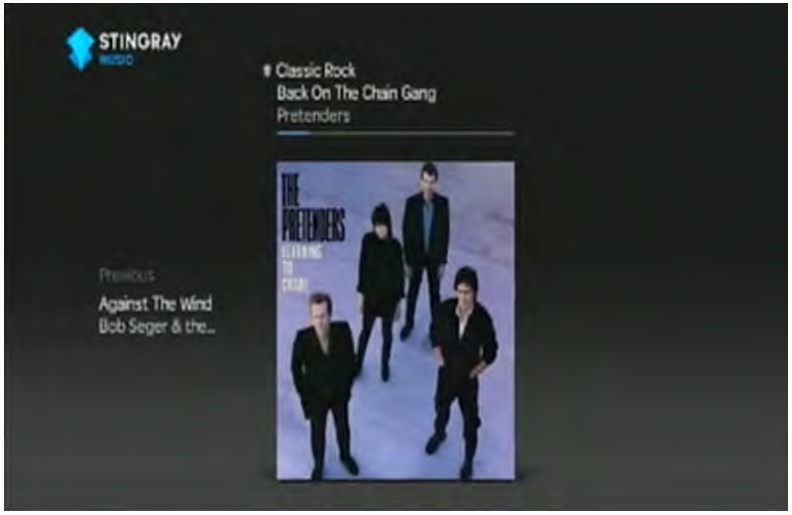
#	'245 Patent	Stingray Music System/Method
1d	the step of transmitting the data packet comprises transmitting the data packet to a receiving system that is configured such that, in response to receiving the data packet, the receiving system automatically generates a video image using the information included in the data packet and automatically outputs the generated video image such that it is received by a display device that is operable to display the video image to a user of the display device without the user having to select a menu item, and	The Stingray Music Method transmits the data packet (*e.g.*, the HTML or XML file) to a receiving system (*e.g.*, the UbiquiCAST broadcast system and/or the AT&T U-verse® system and/or the cellular system and/or a LAN/WAN system, including an end-user device running the Stingray Music app) that is configured such that, in response to receiving the data packet, the receiving system automatically generates a video image (*e.g.*, a video image including (i) the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image or (ii) the song title "Hello, I Love You," the artist name "The Doors," and the associated cover art image) using the information included in the data packet and automatically outputs the generated video image (*e.g.*, the video image including (i) the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image or (ii) the song title "Hello, I Love You," the artist name "The Doors," and the associated cover art image) such that it is received by a display device (*e.g.*, end-user device running the Stingray Music app) that is operable to display the video image to a user of the display device without the user having to select a menu item. 

Exhibit 2: Stingray's Infringement of the '245 Patent

#	'245 Patent	Stingray Music System/Method
		
1e	the generated video image includes the song information comprising the title of the song and the name of the artist.	In the Stingray Music Method, the generated video image (*e.g.*, the video image including (i) the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image or (ii) the song title "Hello, I Love You," the artist name "The Doors," and the associated cover art image) includes the song information comprising the title of the song (*e.g.*, "Back on the Chain Gang" or "Hello, I Love You") and the name of the artist (*e.g.*, "Pretenders" or "The Doors").

Exhibit 2: Stingray's Infringement of the '245 Patent

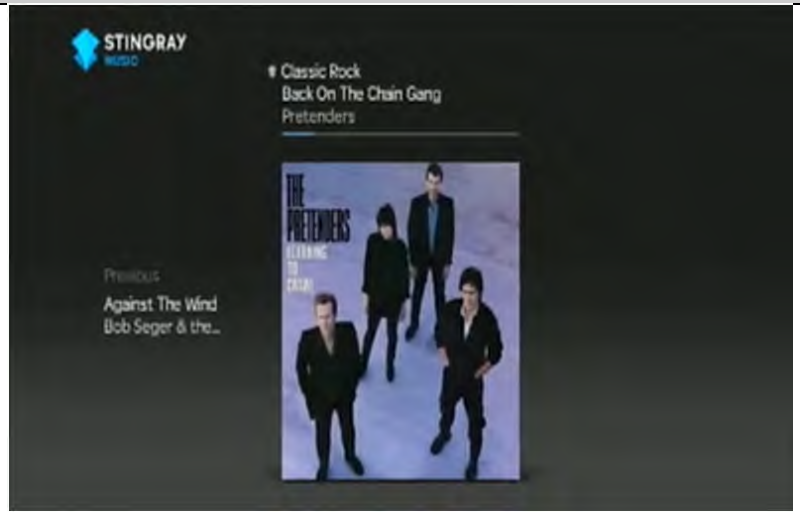
#	'245 Patent	Stingray Music System/Method
		 

Exhibit 2: Stingray's Infringement of the '245 Patent

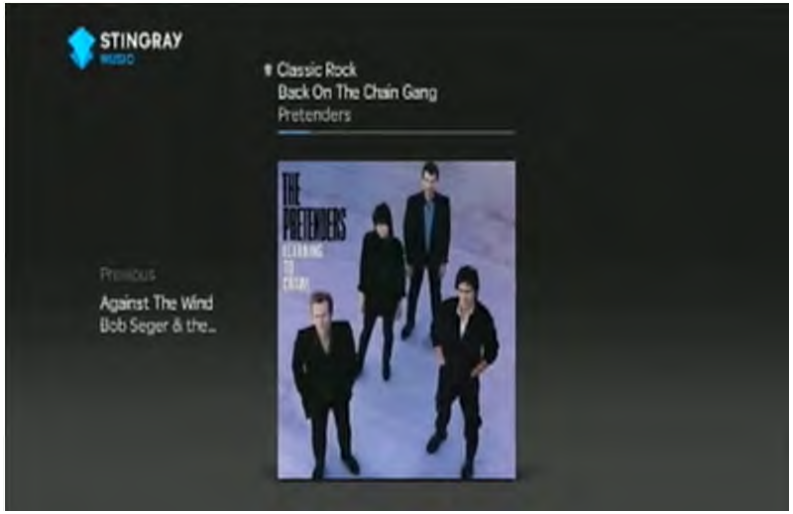
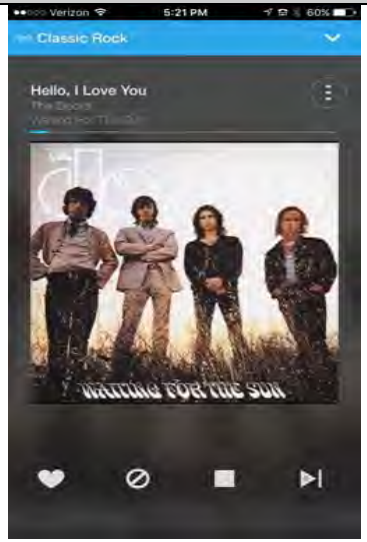
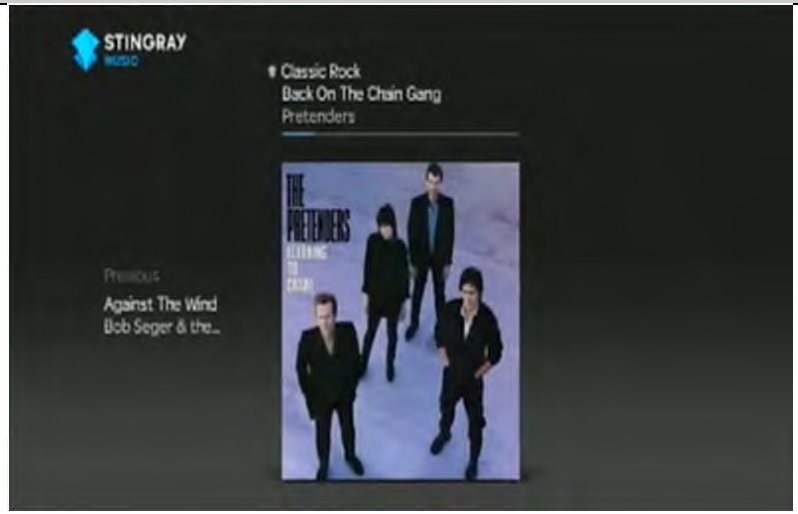
#	'245 Patent	Stingray Music System/Method
2a	2. The method of claim 1,	*See* claim 1, above.
2b	wherein the identified media asset is a still image associated with the song.	In the Stingray Music Method, the identified media asset is a still image associated with the song (*e.g.*, the cover art is (i) a still image of the album "Learning to Crawl" associated with the song "Back on the Chain Gang" or (ii) a still image of the album "Waiting For the Sun" associated with the song "Hello, I Love You"). 

Exhibit 2: Stingray's Infringement of the '245 Patent

#	'245 Patent	Stingray Music System/Method
		
3a	The method of claim 1, further comprising:	*See* claim 1, above.
3b	after transmitting the data packet to the receiving system and while audio data corresponding to the song is being transmitted, transmitting to the receiving system a second data packet for	The Stingray Music Method, after transmitting the data packet to the receiving system and while audio data corresponding to the song (*e.g.*, "Back on the Chain Gang" or "Hello, I Love You") is being transmitted, transmitting to the receiving system a second data packet (*e.g.*, an HTML or XML file) for the song, wherein the second data packet specifies one or more media asset identifiers, each of which identifies one or more media assets (*e.g.*, a thumbnail cover art image for the song "Back on the Chain Gang" or "Hello, I Love You"), said second data packet further comprising the song information associated with the song.

#	'245 Patent	Stingray Music System/Method
	the song, wherein the second data packet specifies one or more media asset identifiers, each of which identifies one or more media assets, said second data packet further comprising the song information associated with the song.	 

#	'245 Patent	Stingray Music System/Method
4a	The method of claim 1, further comprising:	*See* claim 1, above.
4b	selecting the song prior to transmitting, from the first transmission system to the second transmission system, said audio data; and	The Stingray Music Method selects the song (*e.g.*, the song "Back on the Chain Gang" or "Hello, I Love You") prior to transmitting, from the first transmission system to the second transmission system, said audio data (*e.g.*, for the song "Back on the Chain Gang" or "Hello, I Love You").
4c	in response to selecting said song, transmitting to a video subsystem a trigger message, wherein the trigger message comprises an identifier associated with said selected song.	The Stingray Music Method, in response to selecting said song (*e.g.*, the song "Back on the Chain Gang" or "Hello, I Love You"), transmits to a video subsystem (*e.g.*, in the UbiquiCAST server and/or AT&T U-verse® system and/or end-user device running the Stingray Music app) a trigger message, wherein the trigger message comprises an identifier associated with said selected song (*e.g.*, a message with identifier for the song "Back on the Chain Gang" or "Hello, I Love You").
5a	The method of claim 4,	*See* claim 4, above.

Exhibit 2: Stingray's Infringement of the '245 Patent

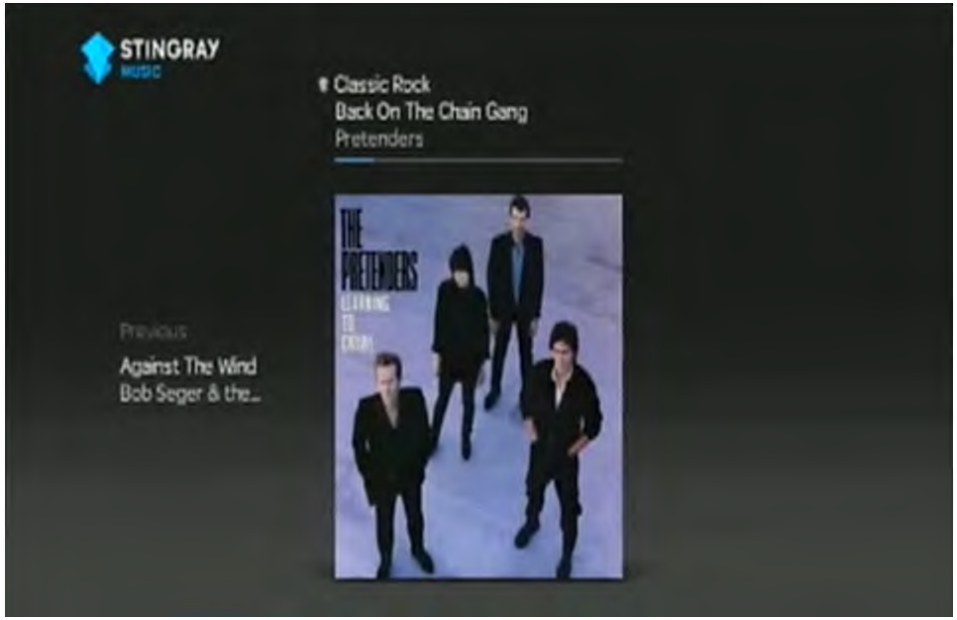
#	'245 Patent	Stingray Music System/Method
5b	wherein the video subsystem is configured to generate the data based, at least in part, on pre-defined configuration data and information included in the trigger message.	In the Stingray Music Method, the video subsystem is configured to generate the data (*e.g.*, a thumbnail cover art image, sound recording title, and recording artist name to be displayed in a video image associated with the sound recording "Back on the Chain Gang" or "Hello, I Love You") based, at least in part, on-predefined configuration data (*e.g.*, display requirements) and information included in the trigger message (*e.g.*, the message including an identifier for the recording for the song "Back on the Chain Gang" or "Hello, I Love You"). *See, e.g.*, Stingray Music website, Support/FAQ, available at music.stingray.com/en_US/about/support (last accessed August 4, 2016) ("Most distributors offer the on-screen display that allows you to see the information about the song that is currently playing, such as the title of the piece, the name of the performer or group, the title of the CD, the name of the record label and the reference number and also the composer or other related information.") (MC-Stingray00119565). 

Exhibit 2: Stingray's Infringement of the '245 Patent

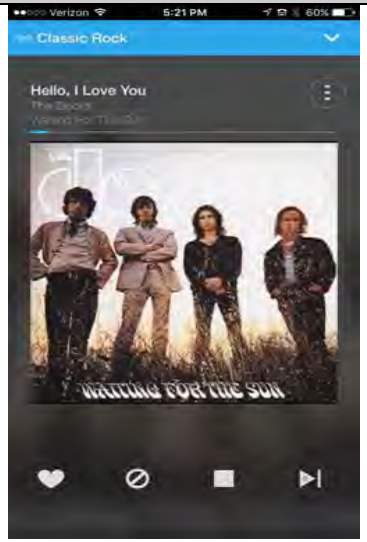
#	'245 Patent	Stingray Music System/Method
		
6a	The method of claim 5,	*See* claim 5, above.
6b	wherein the video subsystem is configured to generate the video image specification in response to receiving the trigger message.	In the Stingray Music Method, the video subsystem is configured to generate the video image specification (*e.g.*, a specification of a thumbnail cover art image, sound recording title, and recording artist name to be displayed in a video image associated with the sound recording "Back on the Chain Gang" or "Hello, I Love You") in response to receiving the trigger message.

Exhibit 2: Stingray's Infringement of the '245 Patent

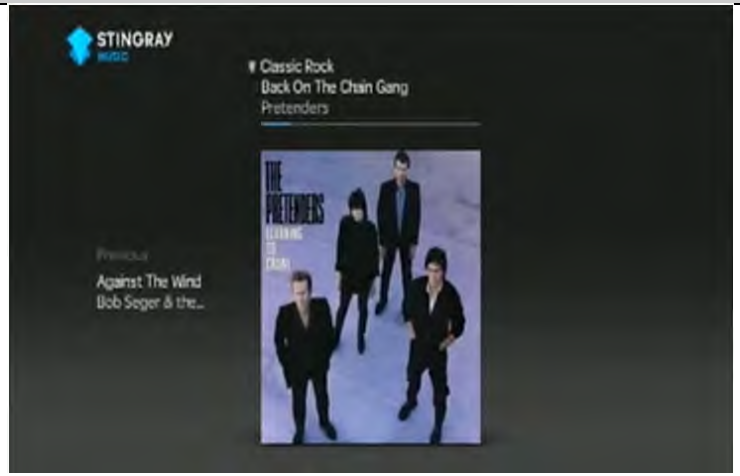
#	'245 Patent	Stingray Music System/Method
		 
7a	The method of	*See* claim 1, above

Exhibit 2: Stingray's Infringement of the '245 Patent

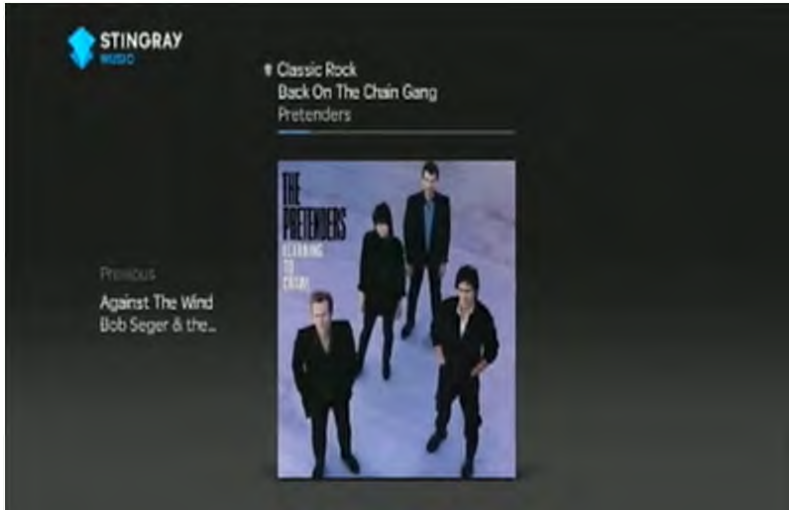
#	'245 Patent	Stingray Music System/Method
	claim 1,	
7b	wherein the data packet specifies a screen location that is associated with said media asset identifier.	In the Stingray Music Method, the data packet specifies a screen location that is associated with said media asset identifier (*e.g.*, a center screen location associated with the media asset identifier for the cover art image). 

Exhibit 2: Stingray's Infringement of the '245 Patent

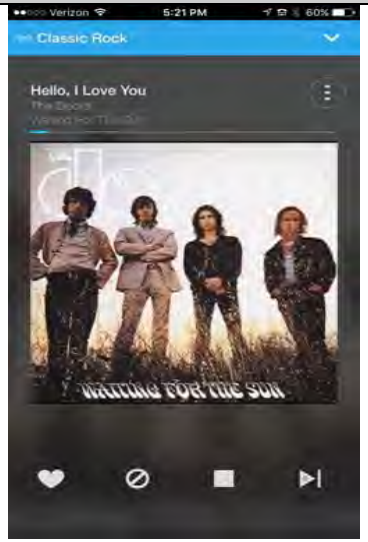
#	'245 Patent	Stingray Music System/Method
		
8a	The method of claim 1,	*See* claim 1, above.
8b	wherein the song is a song that falls within a particular category of songs, and said media asset identifier identifies a media asset associated with the particular category.	In the Stingray Music Method, the song (*e.g.*, "Back on the Chain Gang" or "Hello, I Love You") is a song that falls within a particular category of songs (*e.g.*, a "Classic Rock" genre), and said media asset identifier identifies a media asset associated with the particular category (*e.g.*, the "Classic Rock" genre information and/or the associated graphic image).

Exhibit 2: Stingray's Infringement of the '245 Patent

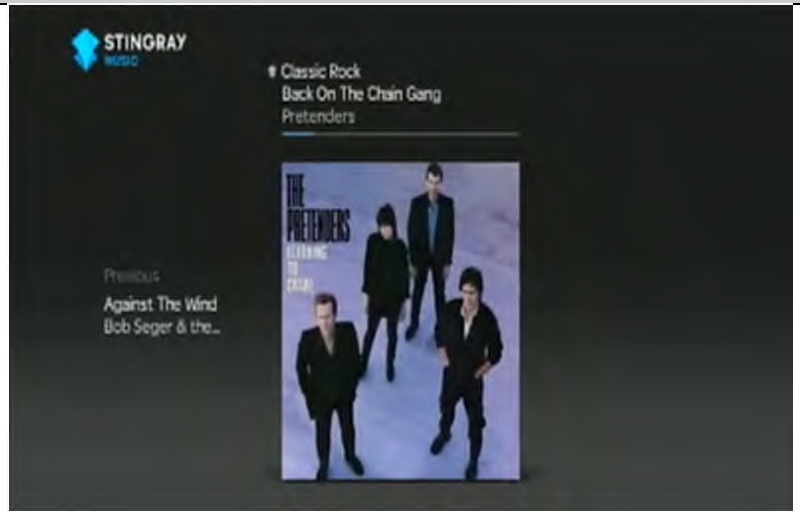
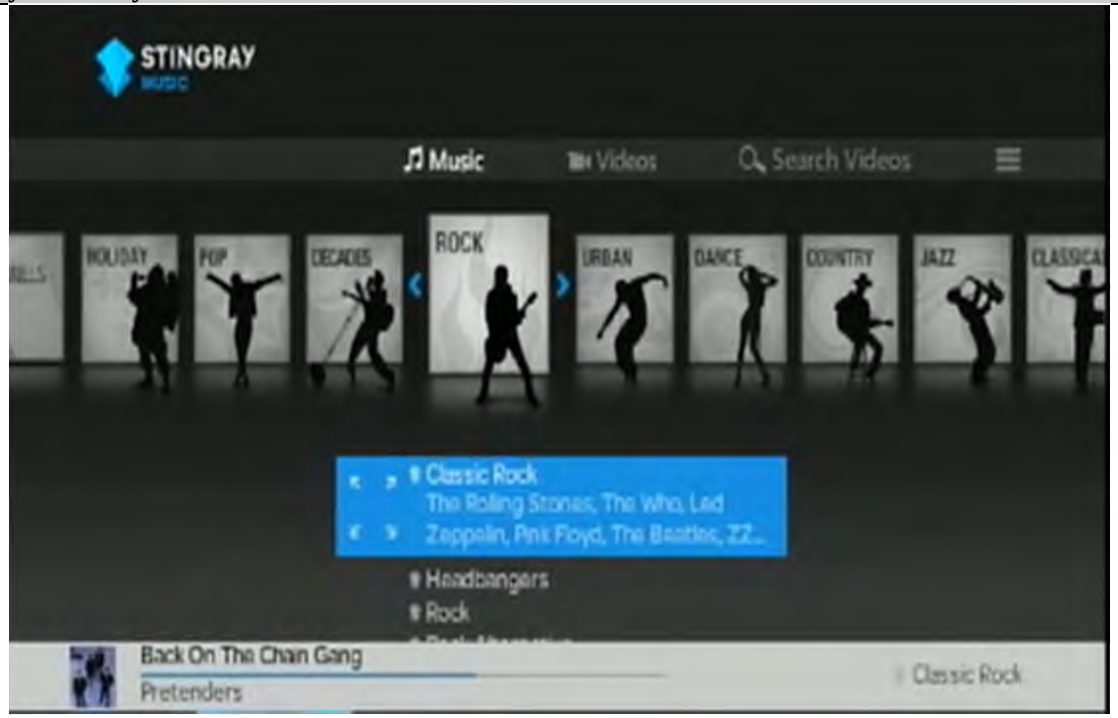
#	'245 Patent	Stingray Music System/Method
		

Exhibit 2: Stingray's Infringement of the '245 Patent

#	'245 Patent	Stingray Music System/Method
		

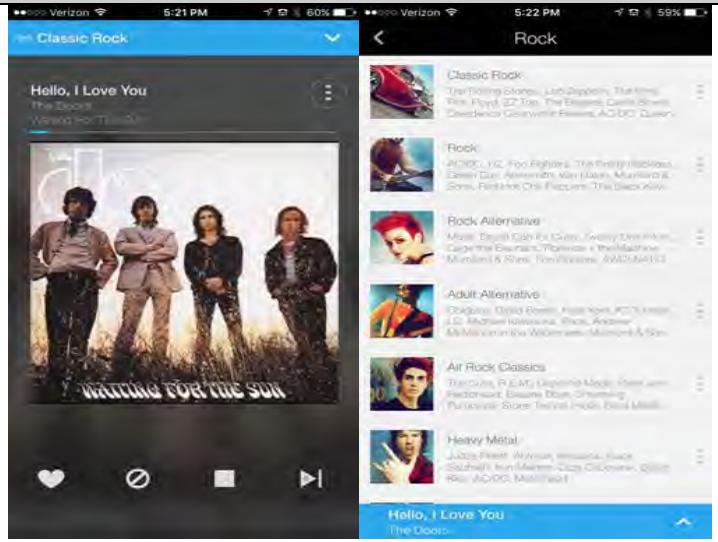
#	'245 Patent	Stingray Music System/Method
		
9a	The method of claim 1,	*See* claim 1, above.
9b	wherein the data packet is transmitted while the audio data is being transmitted.	In the Stingray Music Method, the data packet (*e.g.*, an HTML or XML file) is transmitted while the audio data (*e.g.*, audio data corresponding to the sound recording "Back on the Chain Gang" or "Hello, I Love You") is being transmitted.

Exhibit 2: Stingray's Infringement of the '245 Patent

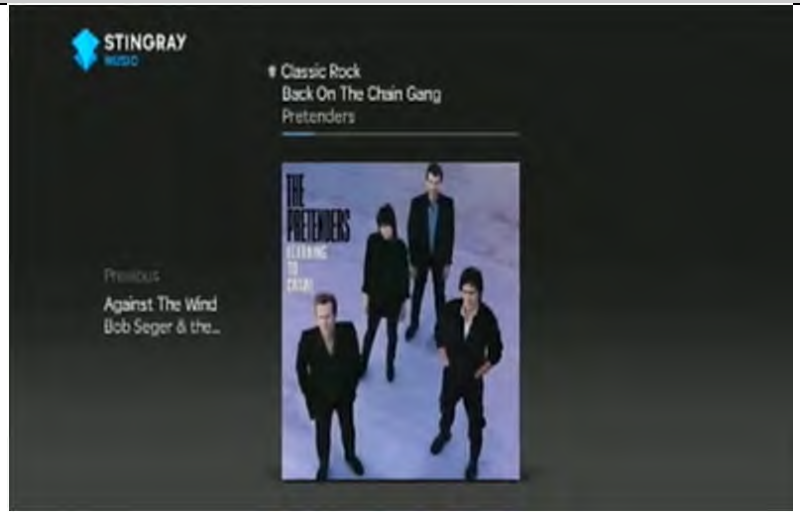
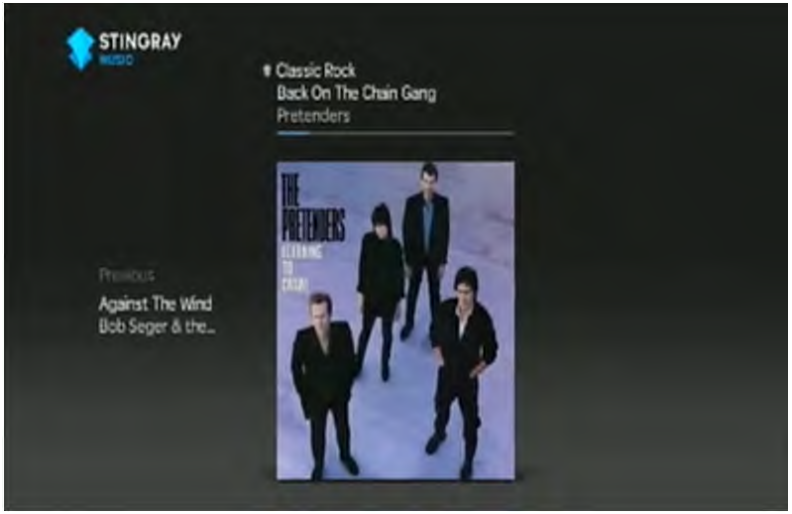
#	'245 Patent	Stingray Music System/Method
		 

Exhibit 2: Stingray's Infringement of the '245 Patent

#	'245 Patent	Stingray Music System/Method
10a	The method of claim 1,	*See* claim 1, above.
10b	wherein the video image is encoded according to a Moving Pictures Expert Group (MPEG) standard.	The video image (*e.g.*, a video image including (i) the song title "Back on the Chain Gang," and/or the artist name "Pretenders" and the associated cover art image or (ii) the song title "Hello, I Love You," and/or the artist name "The Doors" and the associated cover art image) is encoded according to a Moving Pictures Expert Group (MPEG) standard. 

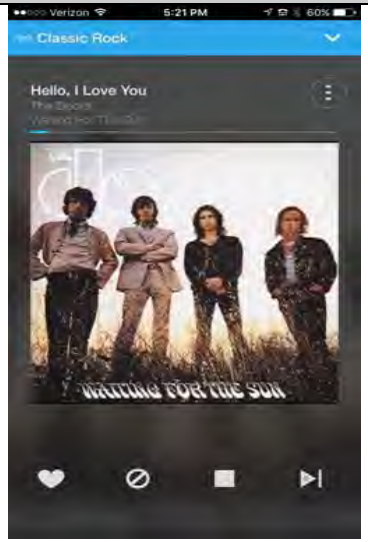
#	'245 Patent	Stingray Music System/Method
		
11a	The method of claim 1, further comprising:	*See* claim 1, above.
11b	generating the data packet; and	The Stingray Music Method generates the data packet (*e.g.*, the HTML or XML file).
11c	after generating the data packet, selecting the song from a playlist prior to transmitting the audio data corresponding to the selected song.	The Stingray Music Method, after generating the data packet, selects the song (*e.g.*, "Back on the Chain Gang" or "Hello, I Love You") from a playlist prior to transmitting the audio data corresponding to the selected song. *See*, *e.g.*, Stingray Music Website, "Continuous Music Service," available at http://music.stingray.com/en_US/about/baseService (last accessed Aug. 4, 2016) ("each channel is professionally programmed by someone who loves and knows the music . . .") (MC-Stingray00119561).

Exhibit 2: Stingray's Infringement of the '245 Patent

#	'245 Patent	Stingray Music System/Method
12a	12. A system for providing a visual complement to an audio service, the system comprising:	The Stingray Music System, which includes the Stingray Music TV app on AT&T's U-verse® platform and/or the Stingray Music mobile app on Apple's iOS platform, is a system for providing a visual complement (*e.g.*, providing a song title, artist name, and/or album cover image as a visual complement to a song) to an audio service (*e.g.*, the streaming music channels available using the Stingray Music TV app on AT&T U-verse® or the Stingray Music mobile app on a mobile device). For example, the Stingray Music System provides access to streaming linear audio channels. *See, e.g.*, "Stingray Music Brings All Good Vibes to AT&T U-verse Customers," dated Oct. 29, 2014, available at about.att.com/story/stingray_music_app_on_uverse_tv.html (last accessed Aug. 4, 2016) ("the new Stingray Music app, available at no additional charge, will have more than 100 streaming music channels") (MC-Stingray00119568); Stingray Music Website, "Continuous Music Service," available at http://music.stingray.com/en_US/about/baseService (last accessed Aug. 4, 2016) ("The Stingray Music continuous music network provides its listeners with a selection of close to fifty music channels, all commercial-free and uninterrupted, that cover a large variety of music genres, from rock to pop to jazz, to classical or international, delivered in pristine quality digital audio.") (MC-Stingray00119561). 

Exhibit 2: Stingray's Infringement of the '245 Patent

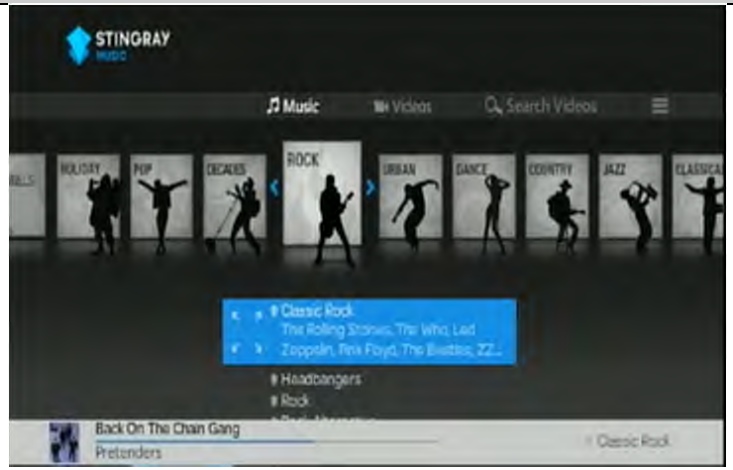
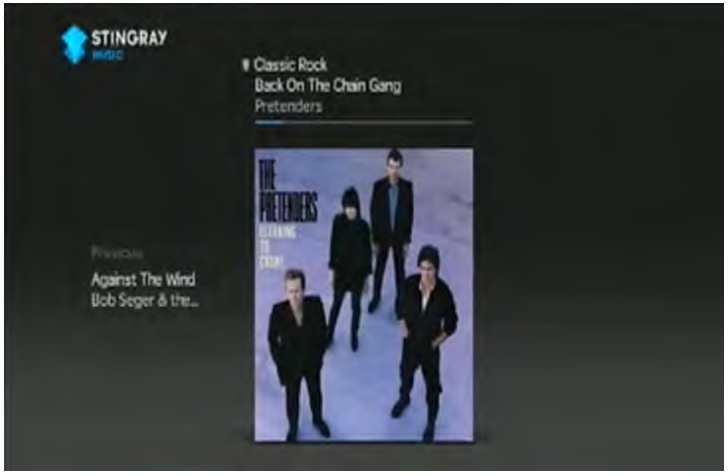
#	'245 Patent	Stingray Music System/Method
		 

Exhibit 2: Stingray's Infringement of the '245 Patent

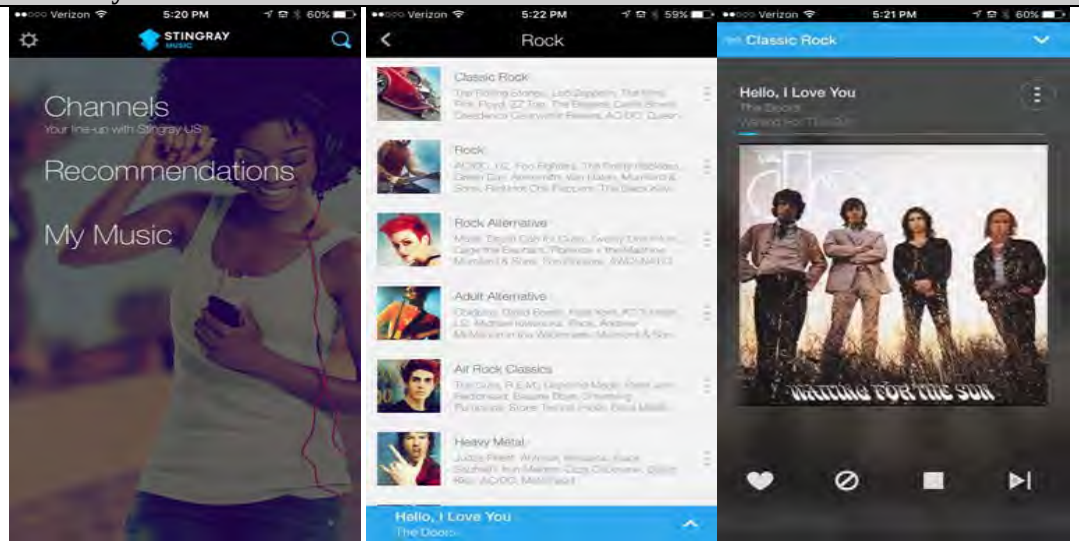
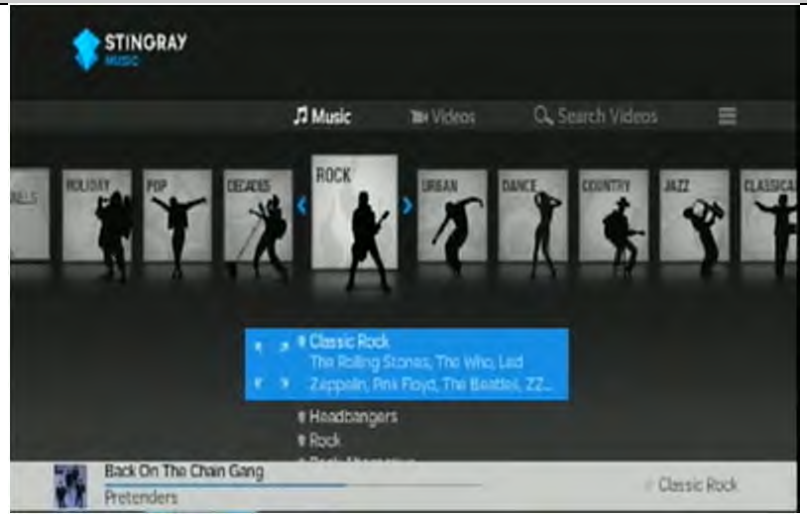
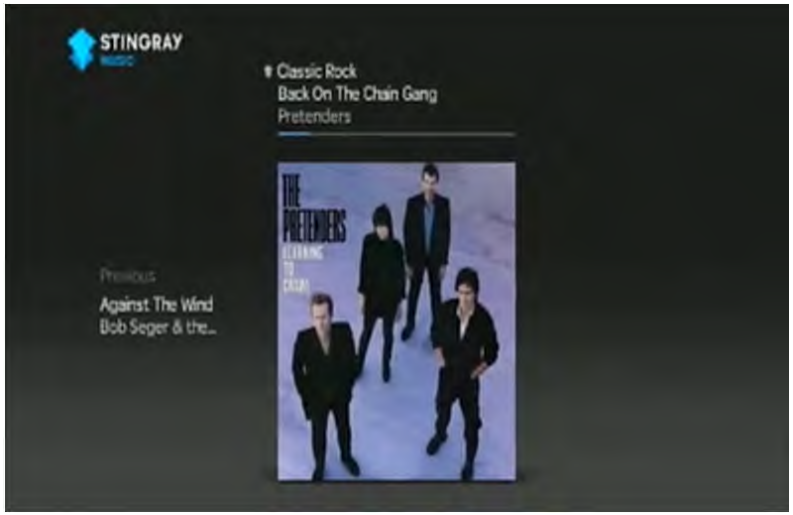
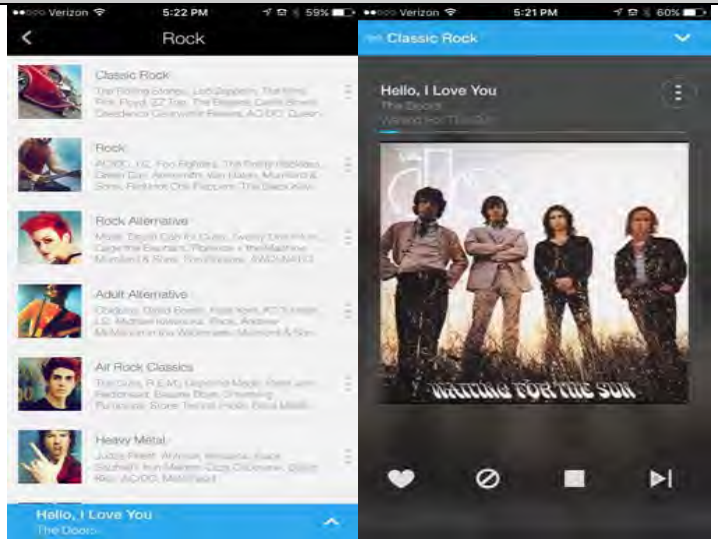
#	'245 Patent	Stingray Music System/Method
		
12b	an audio transmission system configured to transmit audio data corresponding to a sound recording specified in a playlist for a linear audio channel; and	The Stingray Music System includes an audio transmission system configured to transmit audio data corresponding to a sound recording (*e.g.*, audio data corresponding to a sound recording for the song "Back on the Chain Gang" or "Hello, I Love You") specified in a playlist for a linear audio channel (e.g., a classic rock linear audio channel).

Exhibit 2: Stingray's Infringement of the '245 Patent

#	'245 Patent	Stingray Music System/Method
		 

#	'245 Patent	Stingray Music System/Method
		
12c	a receiving system, comprising a receiver and a video image generator, the receiving system being configured to:	The Stingray Music System includes a receiving system (*e.g.*, the UbiquiCAST broadcast system and/or the AT&T U-verse® system and/or the cellular system and/or a LAN/WAN system, including an end-user device running the Stingray Music app) that includes a receiver and a video image generator.
12d	i) in response to receiving a data packet that was generated using an identifier identifying the	In the Stingray Music System, the receiving system is configured to i) in response to receiving a data packet (*e.g.*, an HTML or XML file) that was generated using an identifier identifying the sound recording (*e.g.*, the sound recording for the song "Back on the Chain Gang" or "Hello, I Love You"), generate a video image (*e.g.*, a video image including (i) the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image or (ii) the song title "Hello, I Love You," the artist name "The Doors," and the associated cover art image) in accordance with information included in the data

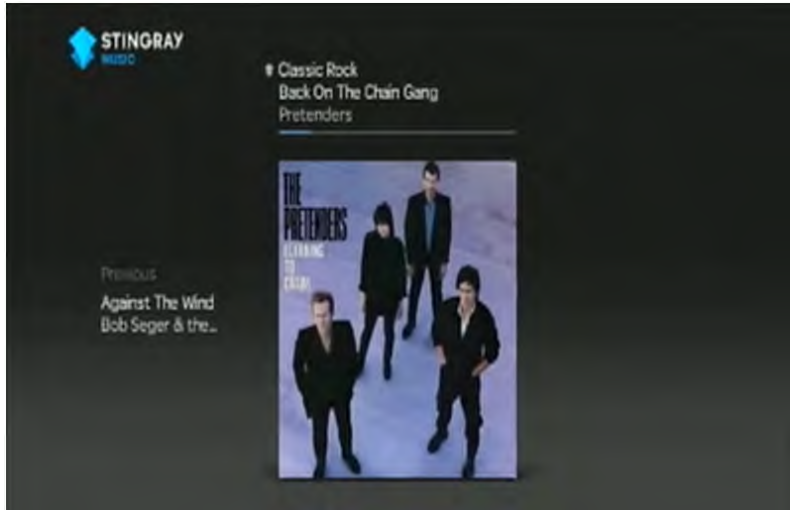
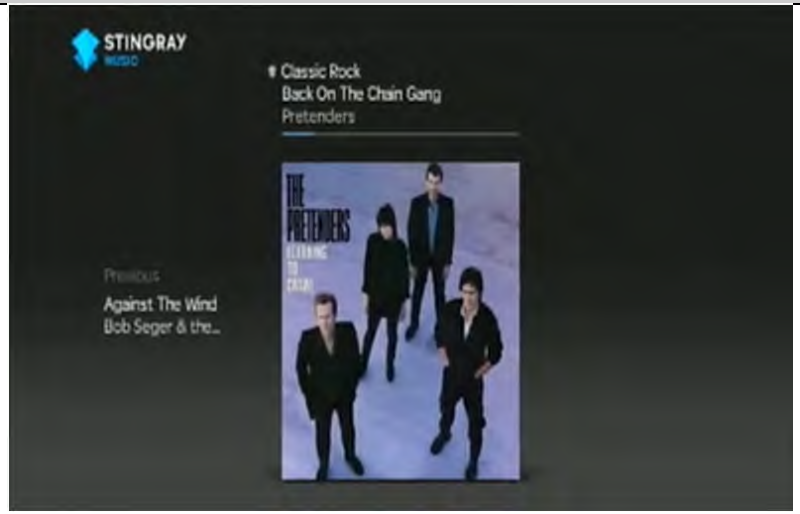
#	'245 Patent	Stingray Music System/Method
	sound recording, generate a video image in accordance with information included in the data packet, wherein the data packet includes a media asset identifier identifying a media asset and further includes sound recording information associated with the sound recording, the sound recording information comprising the title of the sound recording and the name of the artist who recorded the sound recording; and	packet. The data packet includes a media asset identifier identifying a media asset (*e.g.*, a thumbnail cover art image for the song "Back on the Chain Gang" or "Hello, I Love You") and further includes sound recording information associated with the sound recording, the sound recording information comprising the title of the sound recording (*e.g.*, "Back on the Chain Gang" or "Hello, I Love You") and the name of the artist (*e.g.*, the "Pretenders" or "The Doors") who recorded the sound recording. 

Exhibit 2: Stingray's Infringement of the '245 Patent

#	'245 Patent	Stingray Music System/Method
		
12e	ii) automatically output the generated video image such that it is received at a display device operable to display the video image to a user of the display device without the user having to select a menu item , wherein	The receiving system of the Stingray Music System is configured to ii) automatically output the generated video image such that it is received at a display device (*e.g.*, a television or mobile device) operable to display the video image (*e.g.*, the video image including (i) the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image or (ii) the song title "Hello, I Love You," the artist name "The Doors," and the associated cover art image) to a user of the display device without the user having to select a menu item.

Exhibit 2: Stingray's Infringement of the '245 Patent

#	'245 Patent	Stingray Music System/Method
		 

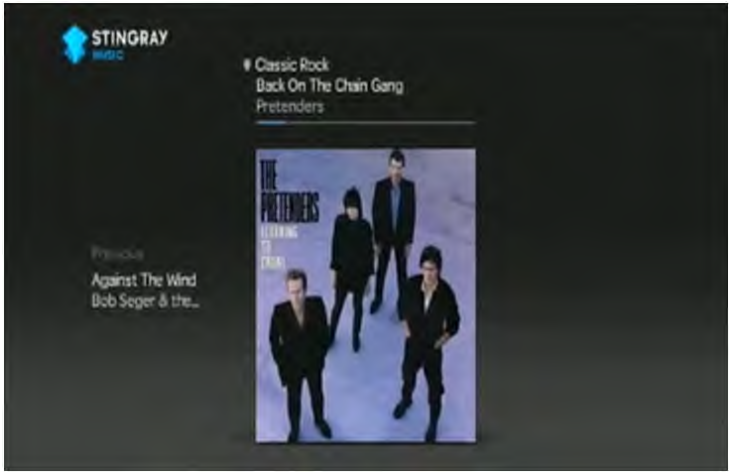
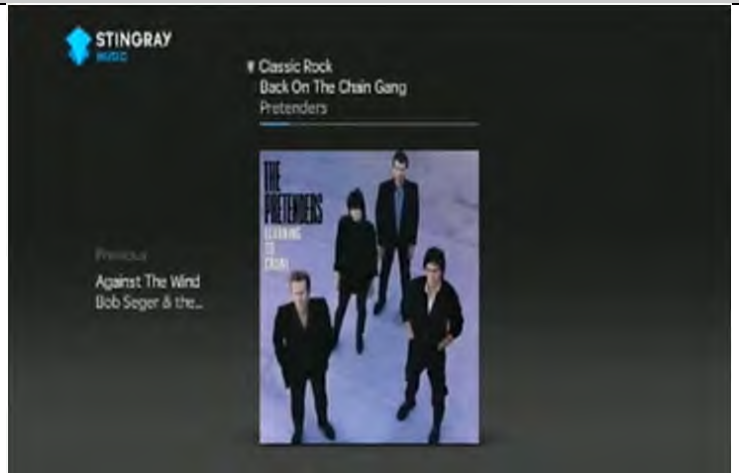
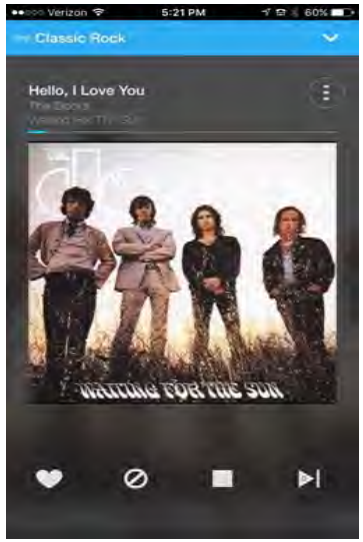
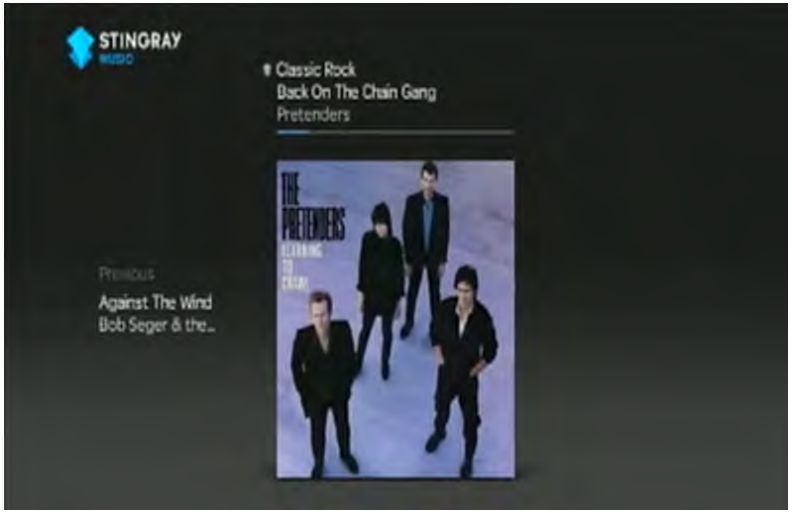
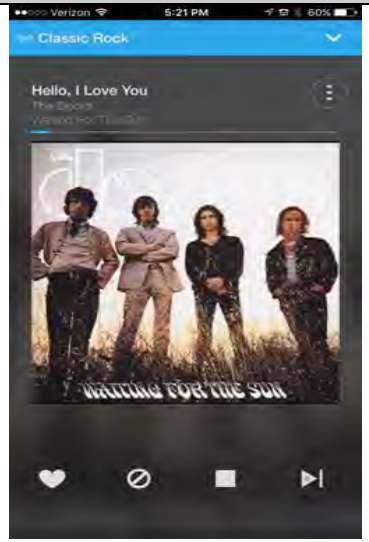
#	'245 Patent	Stingray Music System/Method
12f	the generated video image includes the song information comprising the title of the song and the name of the artist, and	In the Stingray Music System, the generated video image (*e.g.*, the video image including (i) the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image or (ii) the song title "Hello, I Love You," the artist name "The Doors," and the associated cover art image) includes the song information comprising the title of the song (*e.g.*, "Back on the Chain Gang" or "Hello, I Love You") and the name of the artist (*e.g.*, "Pretenders" or "The Doors"). 
12g	the receiving system is configured to retrieve the identified media asset and use the retrieved media asset in generating the video image.	In the Stingray Music System, the receiving system is configured to retrieve the identified media asset (*e.g.*, the thumbnail cover art image for the song "Back on the Chain Gang" or "Hello, I Love You") and use the retrieved media asset in generating the video image (*e.g.*, the video image including (i) the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image or (ii) the song title "Hello, I Love You," the artist name "The Doors," and the associated cover art image).

Exhibit 2: Stingray's Infringement of the '245 Patent

#	'245 Patent	Stingray Music System/Method
		 
13a	13. The system of	*See* claim 12, above.

#	'245 Patent	Stingray Music System/Method
	claim 12,	
13b	wherein the data packet further includes information specifying a screen location that is associated with said media asset identifier.	In the Stingray Music System, the data packet further includes information specifying a screen location (*e.g.*, center of the screen) that is associated with said media asset identifier (*e.g.*, identifying the cover art image for the song "Back on the Chain Gang" or "Hello, I Love You"). 

#	'245 Patent	Stingray Music System/Method
		
14a	The system of claim 12,	*See* claim 12, above.
14b	wherein the sound recording is a song that falls within a particular category of songs, and said media asset identifier identifies a media asset associated with the particular	In the Stingray Music System, the sound recording is a song (*e.g.*, "Back on the Chain Gang" or "Hello, I Love You") that falls within a particular category of songs (*e.g.*, "Classic Rock" genre), and said media asset identifier identifies a media asset associated with the particular category (*e.g.*, the "Classic Rock" genre name and/or the graphic image).

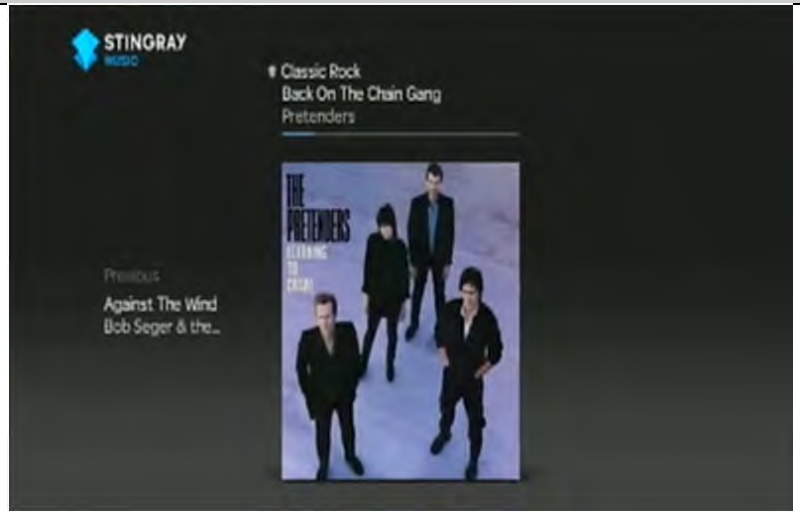
#	'245 Patent	Stingray Music System/Method
	category.	

Exhibit 2: Stingray's Infringement of the '245 Patent

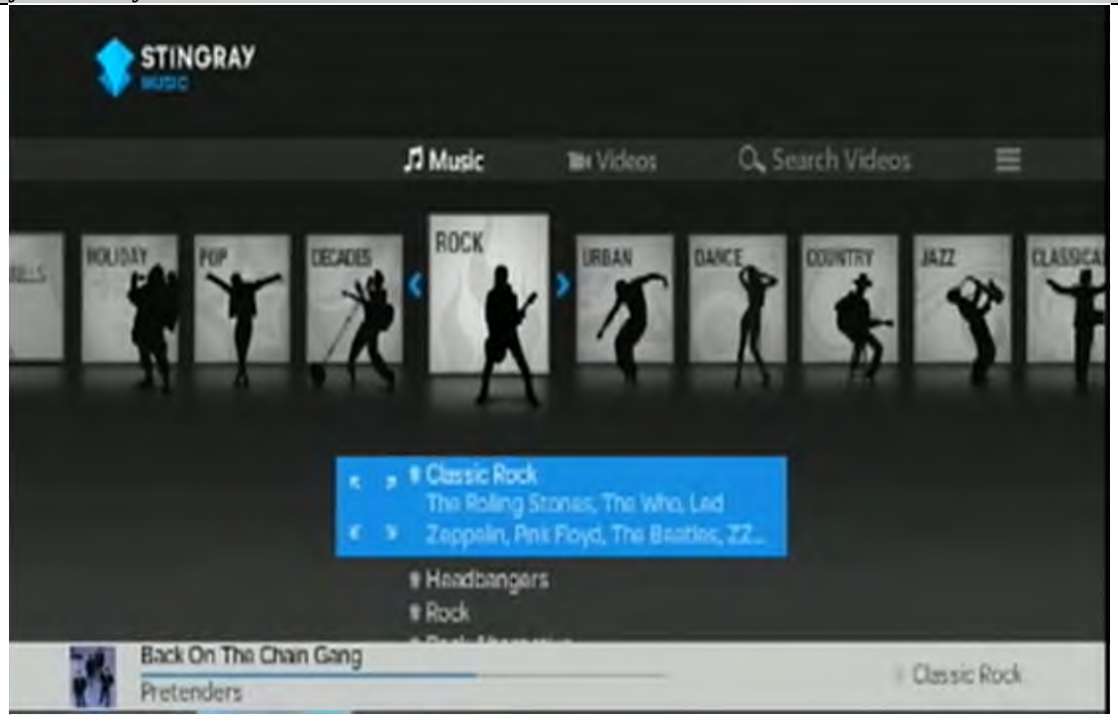
#	'245 Patent	Stingray Music System/Method
		

Exhibit 2: Stingray's Infringement of the '245 Patent

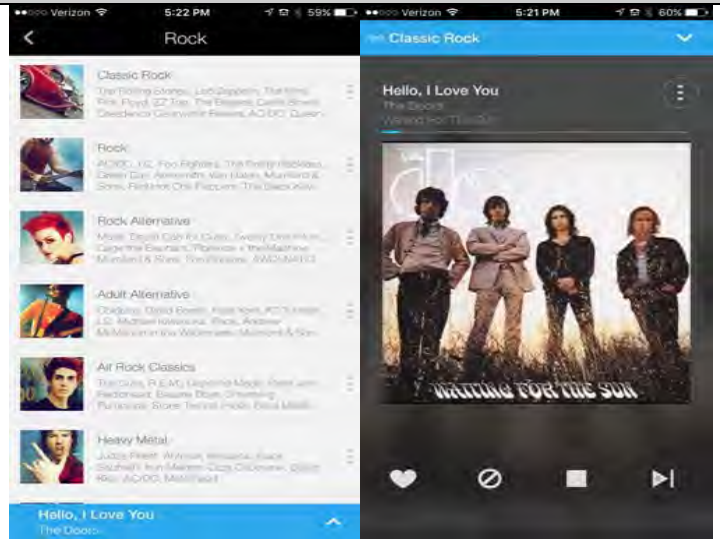
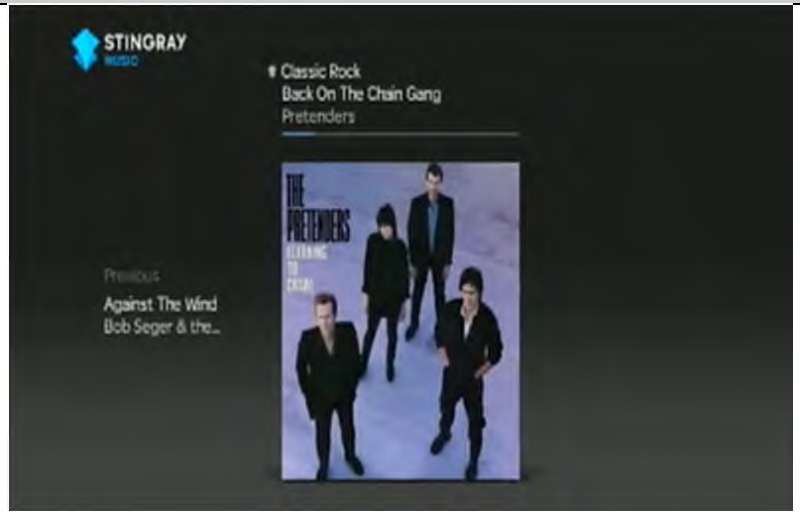
#	'245 Patent	Stingray Music System/Method
		
15a	The system of claim 12,	*See* claim 12, above.
15b	wherein the video image is encoded according to a Moving Pictures Experts Group (MPEG) standard.	The video image (*e.g.*, a video image including (i) the song title "Back on the Chain Gang," and/or the artist name "Pretenders" and the associated cover art image or (ii) the song title "Hello, I Love You," and/or the artist name "The Doors" and the associated cover art image) is encoded according to a Moving Pictures Expert Group (MPEG) standard.

Exhibit 2: Stingray's Infringement of the '245 Patent

#	'245 Patent	Stingray Music System/Method
		 

#	'245 Patent	Stingray Music System/Method
16a	The system of claim 12,	*See* claim 12, above.
16b	wherein said media asset identifier identifies a media asset associated with the sound recording.	The media asset identifier identifies a media asset (*e.g.*, a song title, artist name, and/or album cover art image) associated with the sound recording (*e.g.*, "Back on the Chain Gang" or "Hello, I Love You").
17a	17. A method for providing a visual complement to an audio stream, the method being performed by a music multicast system for providing said audio stream to a plurality of users essentially simultaneously and comprising:	The Stingray Music Method, which uses the Stingray Music TV app on AT&T's U-verse® platform or the Stingray Music mobile app on Apple's iOS platform, is a method for providing a visual complement to an audio stream (*e.g.*, providing a song title, artist name, and/or album cover image as a visual complement to an audio stream for a song). The Stingray Music Method is performed by a music multicast system (*e.g.*, the Stingray UbiquiCAST broadcast system, including the UbiquiCAST music content origin server, and/or the AT&T U-verse® system and/or the cellular system and/or a LAN/WAN system) for providing said audio stream to a plurality of users essentially simultaneously. *See, e.g.*, Stingray Website, "Support," available at http://music.stingray.com/en_US/about/support (last accessed Aug. 4, 2016) ("The Stingray Music website at Stingray Music.tv also has a listing of all songs played in the last 24 hours for each of the Stingray Music channels.") (MC-Stingray00119565).

Exhibit 2: Stingray's Infringement of the '245 Patent

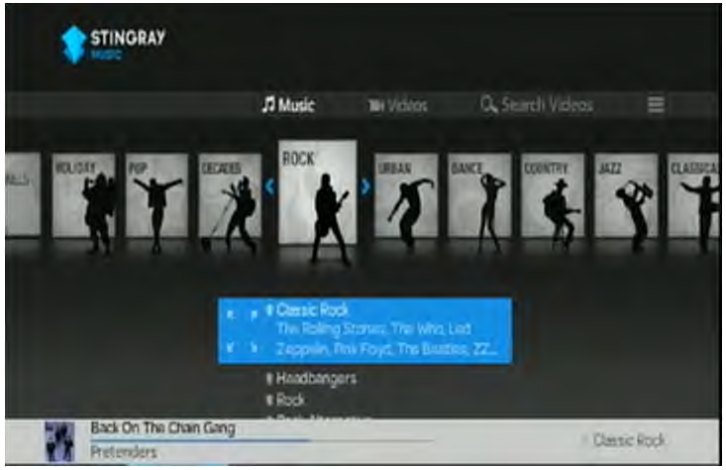
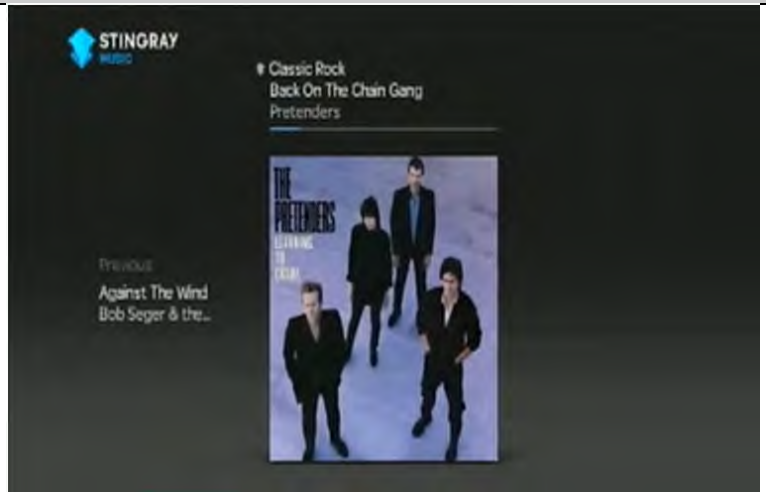
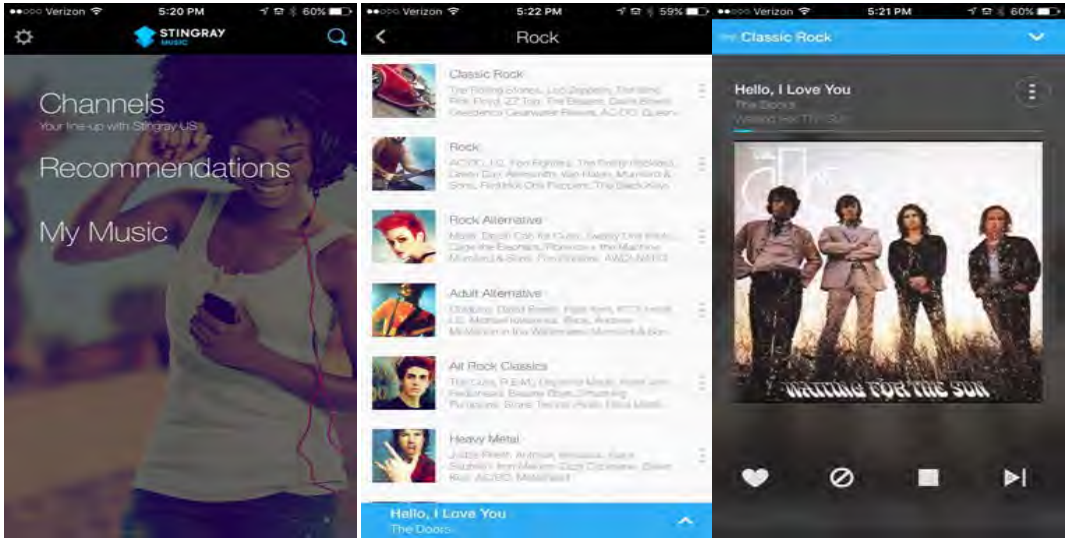
#	'245 Patent	Stingray Music System/Method
		 

Exhibit 2: Stingray's Infringement of the '245 Patent

#	'245 Patent	Stingray Music System/Method
		 

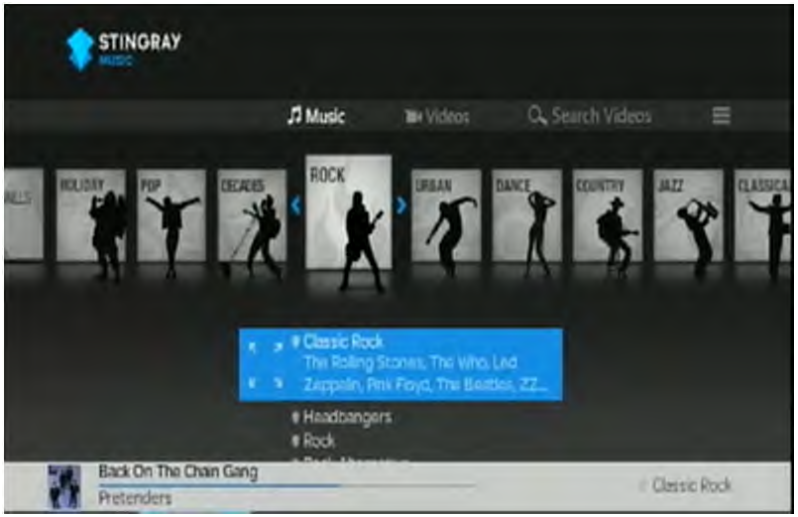
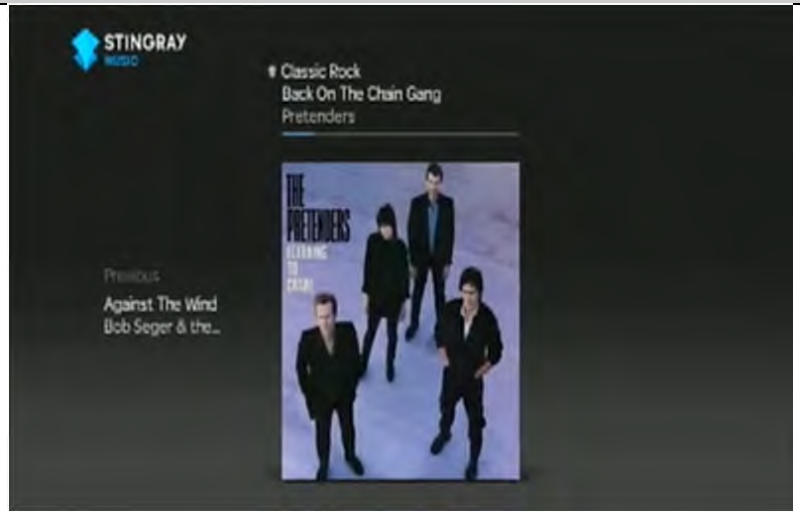
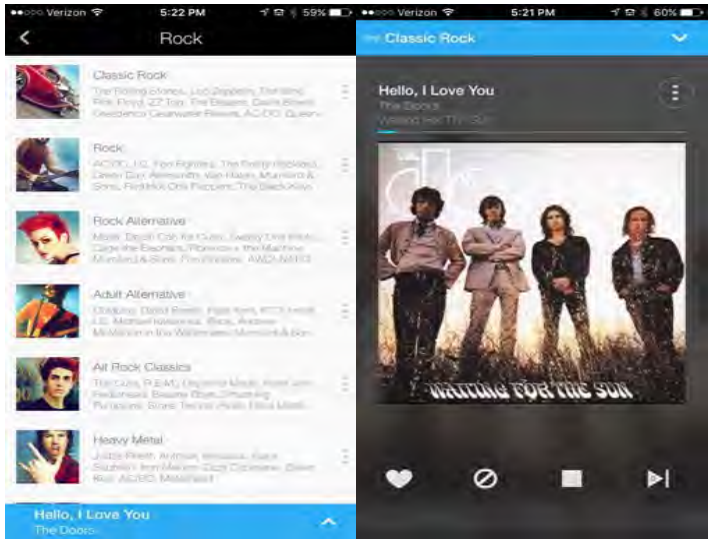
#	'245 Patent	Stingray Music System/Method
17b	the music multicast system automatically selecting a song from a set of available songs;	In the Stingray Music Method, the music multicast system automatically selects a song (*e.g.*, a song "Back on the Chain Gang" or "Hello, I Love You") from a set of available songs (*e.g.*, a set of songs for a classic rock channel). 

Exhibit 2: Stingray's Infringement of the '245 Patent

#	'245 Patent	Stingray Music System/Method
		 

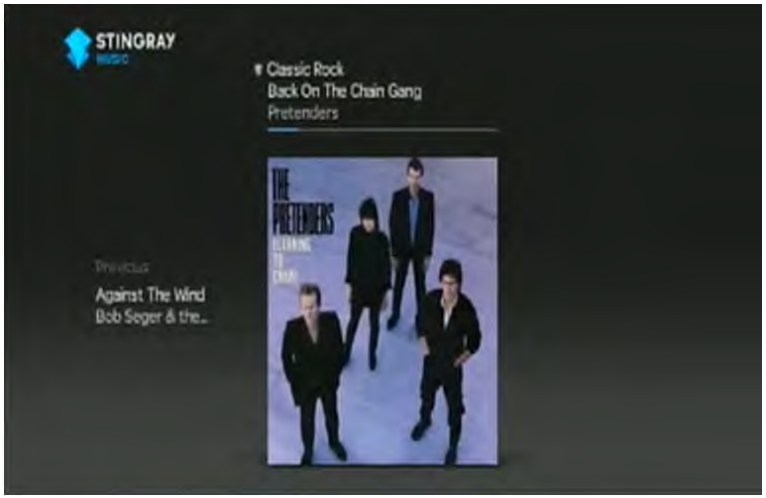
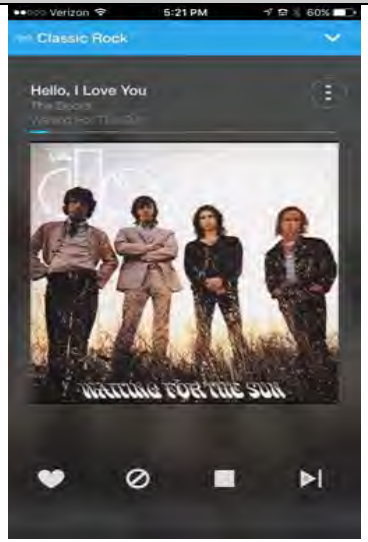
#	'245 Patent	Stingray Music System/Method
17c	the music multicast system generating a data packet based on the selected song, the data packet including a media asset identifier identifying a media asset and further including song information associated with the selected song, the song information comprising the title of the song and the name of the artist who recorded the song;	In the Stingray Music Method, the music multicast system generates a data packet (*e.g.*, an HTML or XML file) based on the selected song (e.g., the song "Back on the Chain Gang" or "Hello, I Love You"), the data packet including a media asset identifier identifying a media asset (*e.g.*, a thumbnail cover art image for the song "Back on the Chain Gang" or "Hello, I Love You") and further including song information associated with the selected song (*e.g.*, the song "Back on the Chain Gang" or "Hello, I Love You"), the song information comprising the title of the song (*e.g.*, "Back on the Chain Gang" or "Hello, I Love You") and the name of the artist who recorded the song (*e.g.*, the "Pretenders" or "The Doors"). 

Exhibit 2: Stingray's Infringement of the '245 Patent

#	'245 Patent	Stingray Music System/Method
		
17d	as a result of automatically selecting the song, transmitting, from a first transmission system to a second transmission system, said audio stream, wherein said audio stream consists of audio data	The Stingray Music Method, as a result of automatically selecting the song, transmits from a first transmission system (*e.g.*, the Stingray UbiquiCAST broadcast system, including the UbiquiCAST music content origin server) to a second transmission system (*e.g.*, the AT&T U-verse® system, a cellular system, and/or a Wireless Area Network (WAN)/Local Area Network (LAN) system), said audio stream. The audio stream consists of audio data corresponding to said selected song (*e.g.*, audio data for the song "Back on the Chain Gang" or "Hello, I Love You").

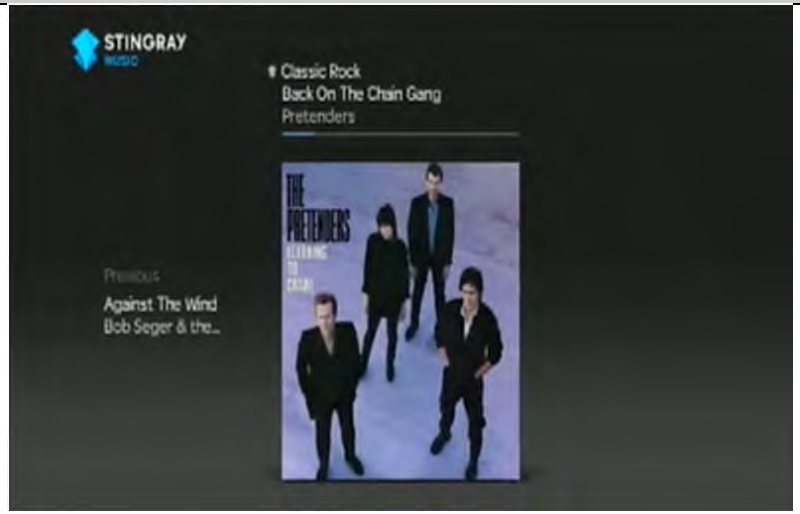
#	'245 Patent	Stingray Music System/Method
	corresponding to said selected song; and	 

Exhibit 2: Stingray's Infringement of the '245 Patent

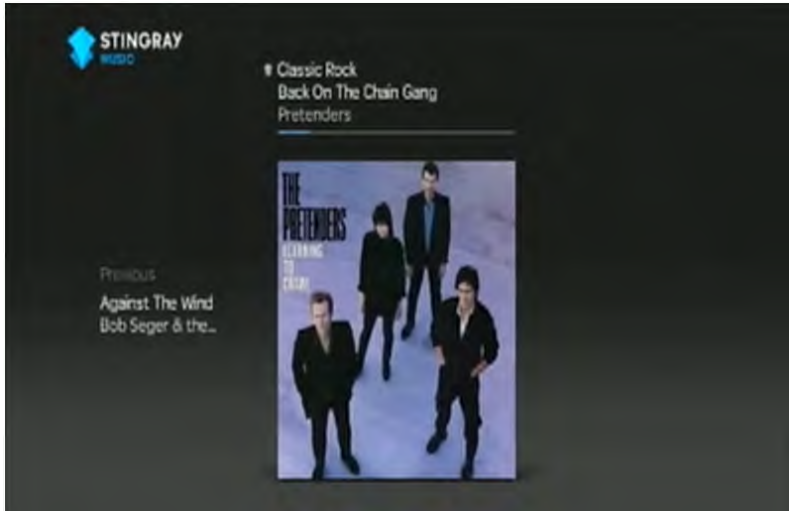
#	'245 Patent	Stingray Music System/Method
17e	transmitting the data packet to a receiving system, wherein	The Stingray Music Method transmits the data packet (*e.g.*, the HTML or XML file) to a receiving system (*e.g.*, the UbiquiCAST broadcast system and/or the AT&T U-verse® system and/or the cellular system and/or a LAN/WAN system, including an end-user device running the Stingray Music app).
17f	the receiving system is configured such that, in response to receiving the data packet, the receiving system automatically generates a video image using the information included in the data packet and automatically outputs the generated video image such that it is received by a display device that is operable to display the video image to a user of the display device without the user having to select a menu item, and	In the Stingray Music Method, the receiving system is configured such that, in response to receiving the data packet (*e.g.*, the HTML or XML file), the receiving system automatically generates a video image (*e.g.*, a video image including (i) the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image or (ii) the song title "Hello, I Love You," the artist name "The Doors," and the associated cover art image) using the information included in the data packet and automatically outputs the generated video image such that it is received by a display device (*e.g.*, a television or mobile device) that is operable to display the video image (*e.g.*, the video image including (i) the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image or (ii) the song title "Hello, I Love You," the artist name "The Doors," and the associated cover art image) to a user of the display device without the user having to select a menu item. 

Exhibit 2: Stingray's Infringement of the '245 Patent

#	'245 Patent	Stingray Music System/Method
		
17g	the generated video image includes the song information comprising the title of the song and the name of the artist and a still image identified by the media asset identifier.	In the Stingray music system, the generated video image (e.g., the video image including (i) the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image or (ii) the song title "Hello, I Love You," the artist name "The Doors," and the associated cover art image) output by the receiving system includes the song information comprising the title of the song (*e.g.*, "Back on the Chain Gang" or "Hello, I Love You") and the name of the artist (*e.g.*, "Pretenders" or "The Doors") and a still image identified by the media asset identifier (*e.g.*, the associated cover art image).

Exhibit 2: Stingray's Infringement of the '245 Patent

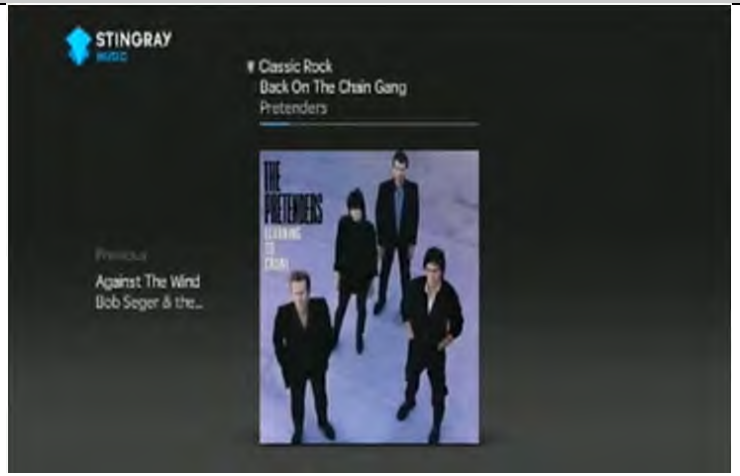
#	'245 Patent	Stingray Music System/Method
		 

EXHIBIT 3

Stingray's Infringement of the '025 Patent

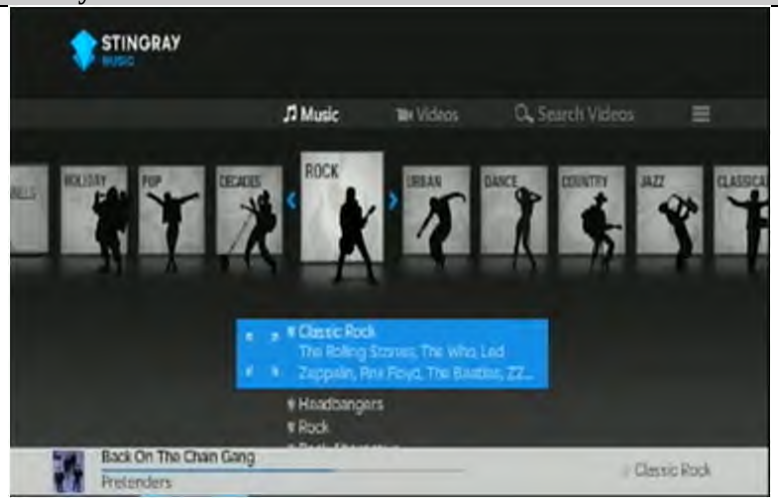
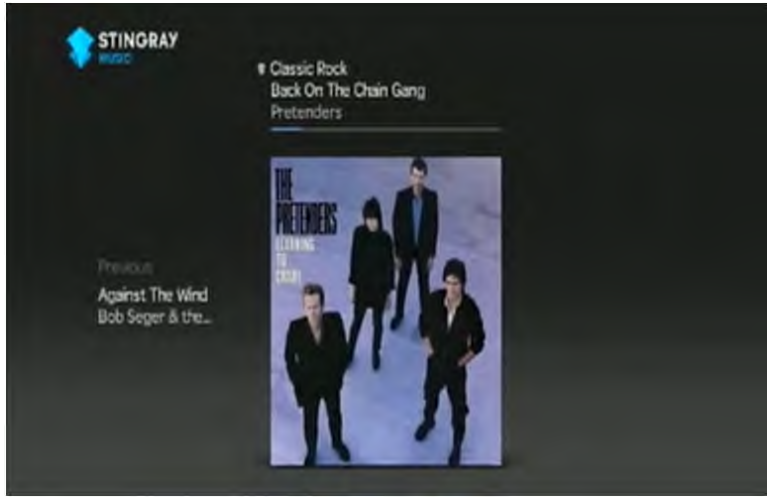
UNITED STATES PATENT NO. 7,320,025 ("the '025 Patent")

This portion of Plaintiff's infringement contentions refers to the Stingray Music TV app that is offered on the AT&T's U-verse® platform as exemplary. These contentions apply to all similar Stingray Music products and services as offered on other platforms[1] (collectively the "Stingray Music System/Method").

#	The '025 Patent	Stingray Music System/Method
1a	1. A method, comprising:	The Stingray Music Method, which uses the Stingray Music TV app on AT&T's U-verse® platform, is a method.
1b	configuring a client system to receive and play music broadcast from a broadcast media source through a broadcast channel;	The Stingray Music Method configures a client system (*e.g.*, an end-user device running the Stingray Music app coupled to a television) to receive and play music (*e.g.*, the song "Back on the Chain Gang" or "Workin' for MCA") broadcast from a broadcast media source (*e.g.*, the UbiquiCAST broadcast system operated by Stingray alone or in conjunction with AT&T U-verse®) through a broadcast channel (*e.g.*, the "Classic Rock" channel). *See, e.g.*, "Stingray Music Brings All Good Vibes to AT&T U-verse® Customers," Oct. 29, 2014, available at about.att.com/story/stingray_music_app_on_uverse_tv.html (last accessed Aug. 4, 2016) ("the new Stingray Music app, available at no additional charge, will have more than 100 streaming music channels") (MC-Stingray00119568); Stingray Website, "Continuous Music Service," available at http://music.stingray.com/en_US/about/baseService (last accessed Aug. 4, 2016) ("The Stingray Music continuous music network provides its listeners with a selection of close to fifty music channels, all commercial-free and uninterrupted, that cover a large variety of music genres, from rock to pop to jazz, to classical or international, delivered in pristine quality digital audio.") (MC-Stingray00119561).

[1] These platforms include, for example, cable operator, satellite, Internet Protocol television (IPTV), mobile, and/or website platforms.

Exhibit 3: Stingray's Infringement of the '025 Patent

#	The '025 Patent	Stingray Music System/Method
		 
1c	receiving application data at the client system, the application data including	In the Stingray Music Method, the client system receives application data that includes a video identifier identifying a video (*e.g.*, an identifier of a music video for the song

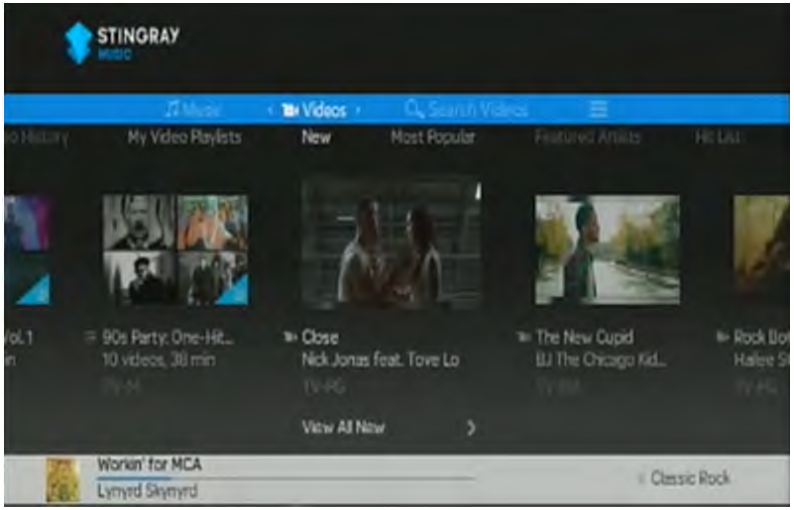
#	The '025 Patent	Stingray Music System/Method
	a video identifier identifying a video, wherein the application data is transmitted with the broadcast music;	"Close"). The application data is transmitted with the broadcast music (*e.g.*, the song "Back on the Chain Gang" or "Workin' for MCA"). 
1d	while the client system is playing the broadcast music, (a) enabling a user of the client system to indicate that the user desires to view the video and (b) receiving an indication that the user desires to view the video;	While the client system is playing the broadcast music (*e.g.*, the song "Workin' for MCA"), the Stingray Music Method (a) enables a user of the client system to indicate that the user desires to view the video (*e.g.*, the music video for the song "Close") and (b) receives an indication that the user desires to view the video (*e.g.*, the music video for the song "Close").

Exhibit 3: Stingray's Infringement of the '025 Patent

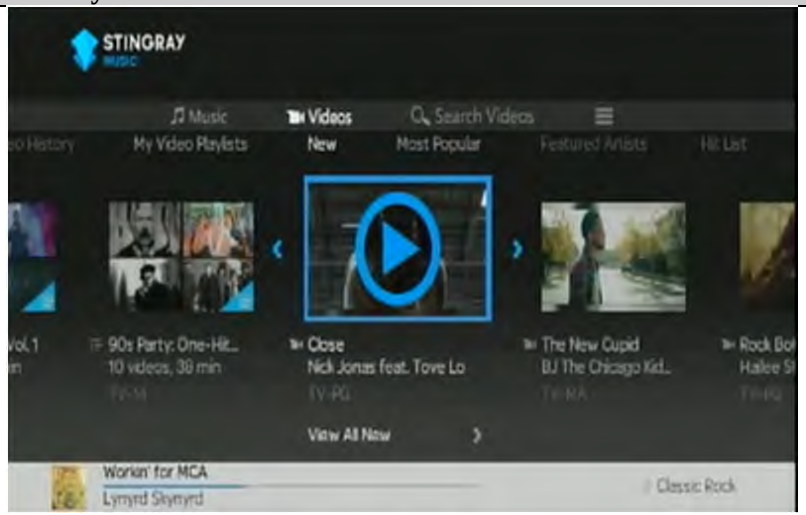
#	The '025 Patent	Stingray Music System/Method
		
1e	in response to receiving the indication, automatically ceasing the playing of the broadcast music, transmitting from the client system to an on-demand system the received video identifier, and establishing an on-demand session between the on-demand system and the client system; and	The Stingray Music Method, in response to receiving the indication (*e.g.*, the indication that the user desires to view the music video for the song "Close"), automatically ceases the playing of the broadcast music (*e.g.*, the song "Workin' for MCA"), transmits from the client system to an on-demand system (*e.g.*, the Stingray UbiquiCAST broadcast system, including the UbiquiCAST music content origin server, and/or the AT&T U-verse® system) the received video identifier (*e.g.*, the identifier of the music video for the song "Close"), and establishes an on-demand session between the on-demand system and the client system. *See, e.g.*, Stingray Music Website "Music Videos on Demand Service," available at http://music.stingray.com/en_US/about/MVOD (last accessed Aug. 6, 2016) ("[t]he Stingray Music service offering now includes Music Videos on Demand") (MC-Stingray00119564).

Exhibit 3: Stingray's Infringement of the '025 Patent

#	The '025 Patent	Stingray Music System/Method
		
1f	after establishing the on-demand session, transmitting from the on-demand system to the client system the identified video, receiving the transmitted video at the client system, and automatically playing the received video in response to receiving the transmitted video from the on-demand system.	The Stingray Music Method, after establishing the on-demand session, transmits from the on-demand system to the client system the identified video (*e.g.*, the music video for the song "Close"), receives the transmitted video at the client system, and automatically plays the received video in response to receiving the transmitted video from the on-demand system.

Exhibit 3: Stingray's Infringement of the '025 Patent

#	The '025 Patent	Stingray Music System/Method
		
3a	3. The method of claim 1, further comprising	*See* claim 1, above.
3b	displaying a button on a display device of the client system while playing the broadcast music.	The Stingray Music Method displays a button (*e.g.*, a "play" button for the song entitled "Close") on a display device of the client system (*e.g.*, a television) while playing the broadcast music (*e.g.*, the song entitled "Working' for MCA").

Exhibit 3: Stingray's Infringement of the '025 Patent

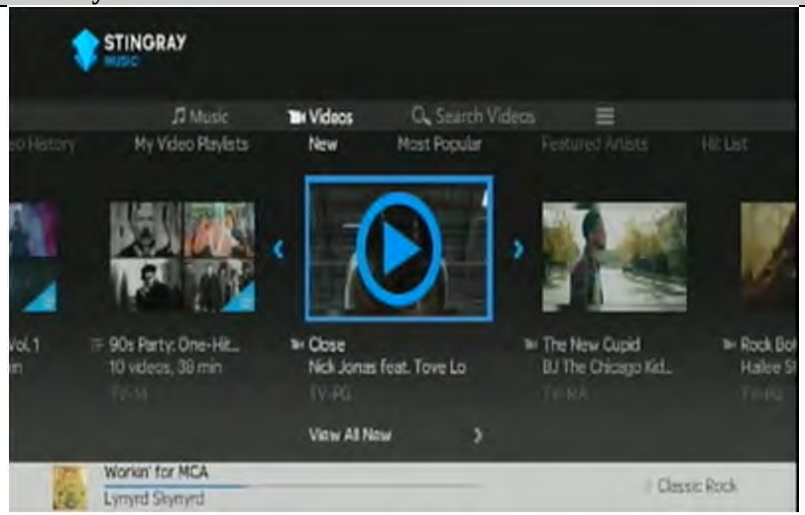
#	The '025 Patent	Stingray Music System/Method
		
4a	4. The method of claim 3,	*See* claim 3, above.
4b	wherein the user indicates that the user desires to view the video by activating the button.	In the Stingray Music Method, the user indicates that the user desires to view the video by activating the button (*e.g.*, the user activates the "play" button for the song entitled "Close").

Exhibit 3: Stingray's Infringement of the '025 Patent

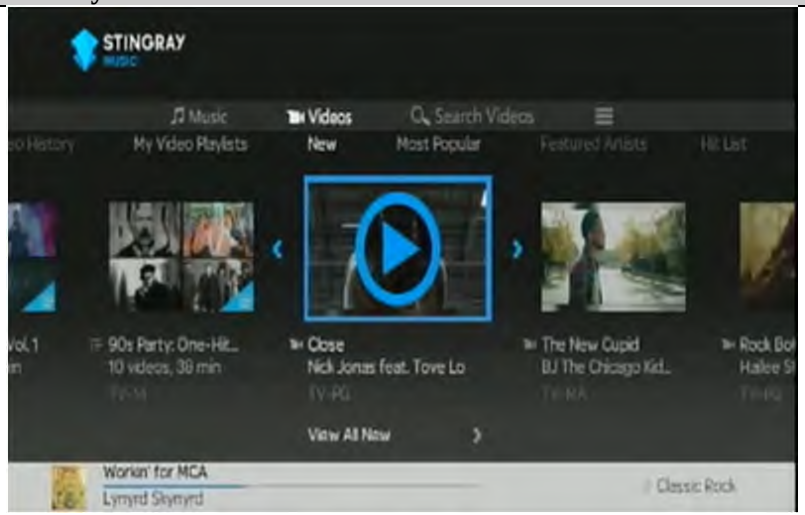
#	The '025 Patent	Stingray Music System/Method
		
8a	8. A video-on-demand method comprising,	The Stingray Music Method, which uses the Stingray Music TV app on AT&T's U-verse® platform, is a video-on-demand method. *See, e.g.*, Stingray Music Website "Music Videos on Demand Service," available at http://music.stingray.com/en_US/about/MVOD (last accessed Aug. 6, 2016) ("[t]he Stingray Music service offering now includes Music Videos on Demand") (MC-Stingray00119564).

Exhibit 3: Stingray's Infringement of the '025 Patent

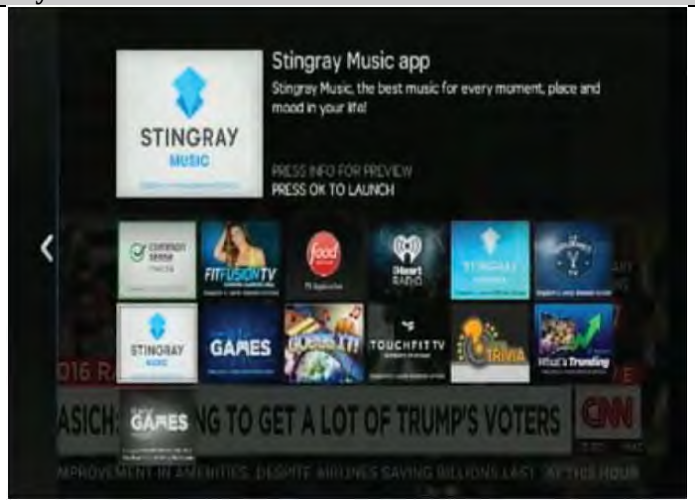
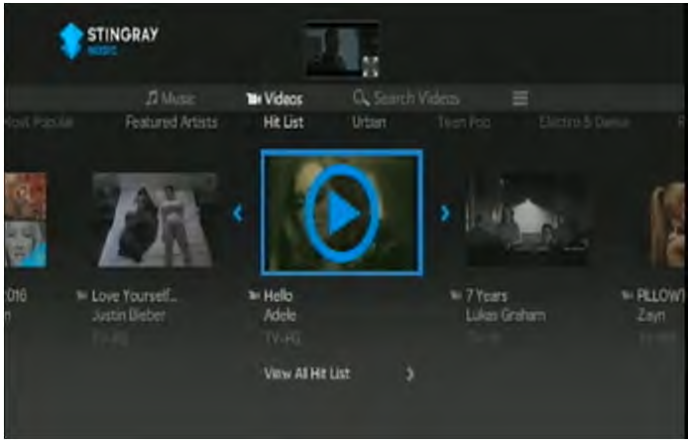
#	The '025 Patent	Stingray Music System/Method
		 
8b	receiving at an on-demand system information indicating that a user desires to view a selected video;	The Stingray Music Method receives, at on-demand system (*e.g.*, the Stingray UbiquiCAST broadcast system, including the UbiquiCAST music content origin server, and/or the AT&T U-verse® system), information indicating that a user desires to view a selected video (*e.g.*, information indicating that a user desires to view a selected music

Exhibit 3: Stingray's Infringement of the '025 Patent

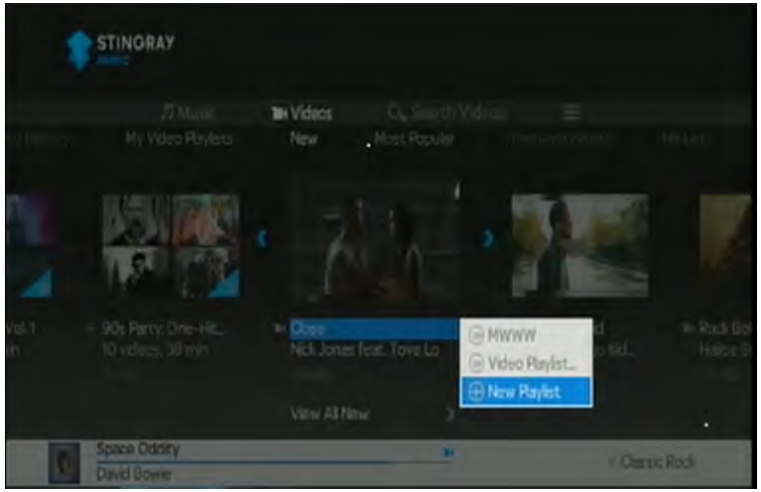
#	The '025 Patent	Stingray Music System/Method
		video for the song entitled "Close" in the form of information indicating that the user desires to create a playlist the music video for the song entitled "Close"). 
8c	creating a playlist, wherein the playlist includes a plurality of media assets, including one media asset corresponding to the selected video;	The Stingray Music Method creates a playlist (*e.g.*, a playlist entitled "p1"). The playlist includes a plurality of media assets (*e.g.*, music videos for songs entitled "Close" and "The New Cupid"), which include one media asset corresponding to the selected video (*e.g.*, the music video for the song entitled "Close").

Exhibit 3: Stingray's Infringement of the '025 Patent

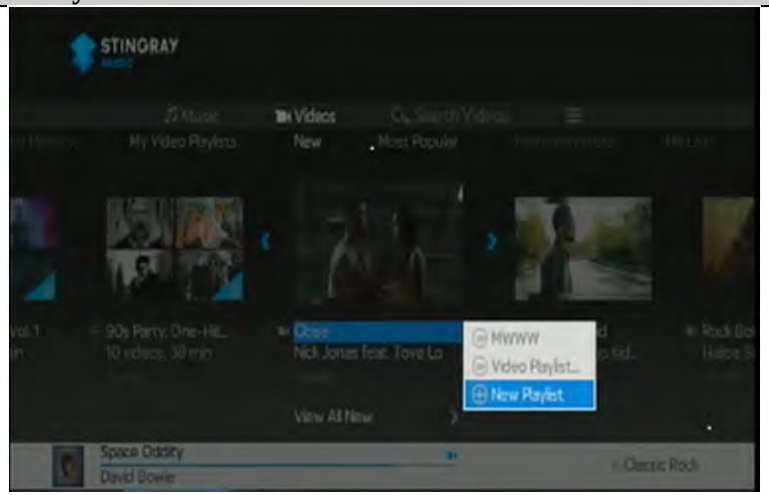
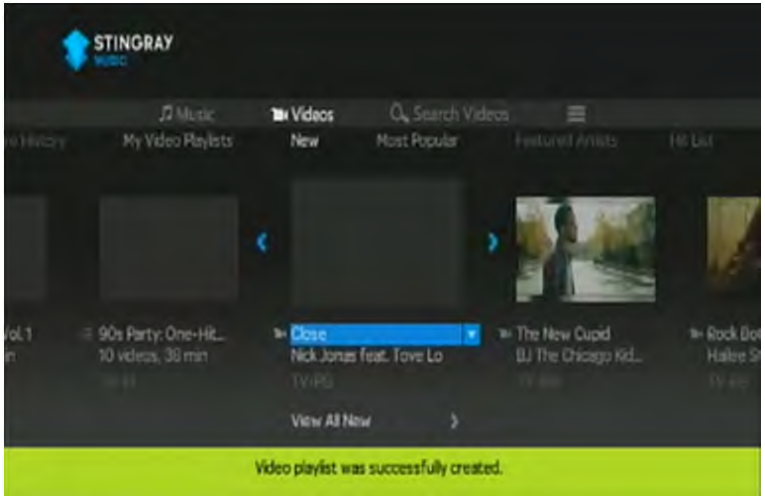
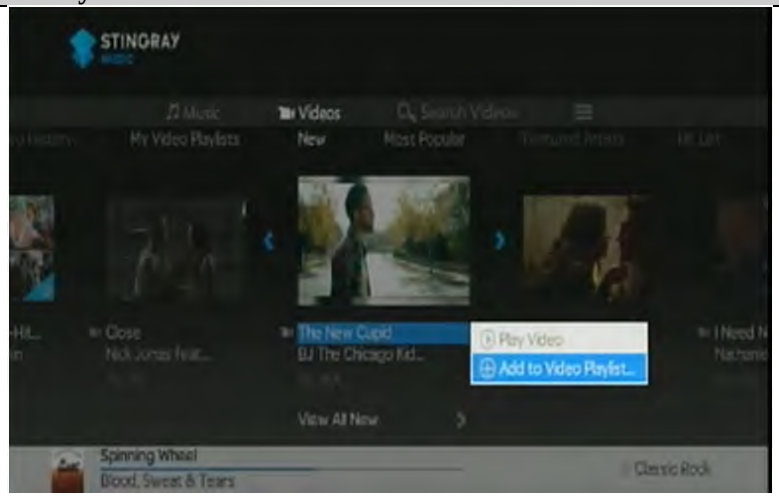
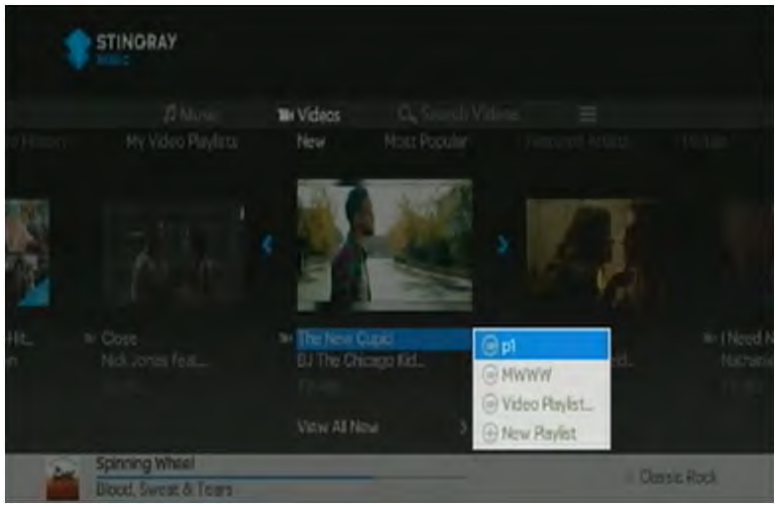
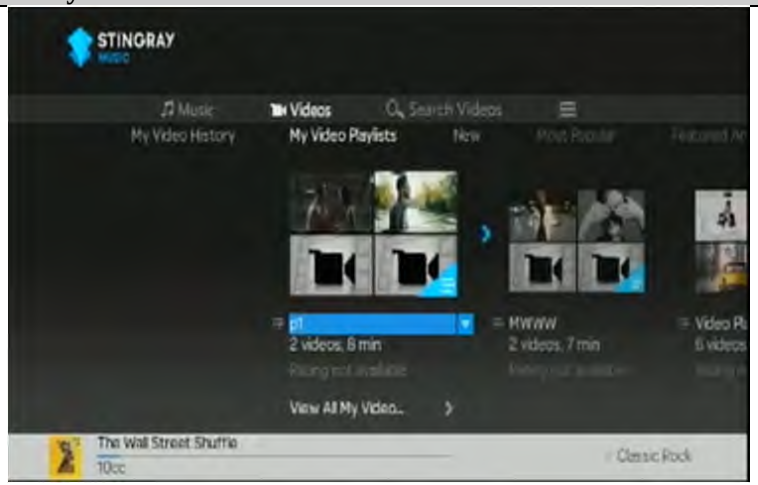
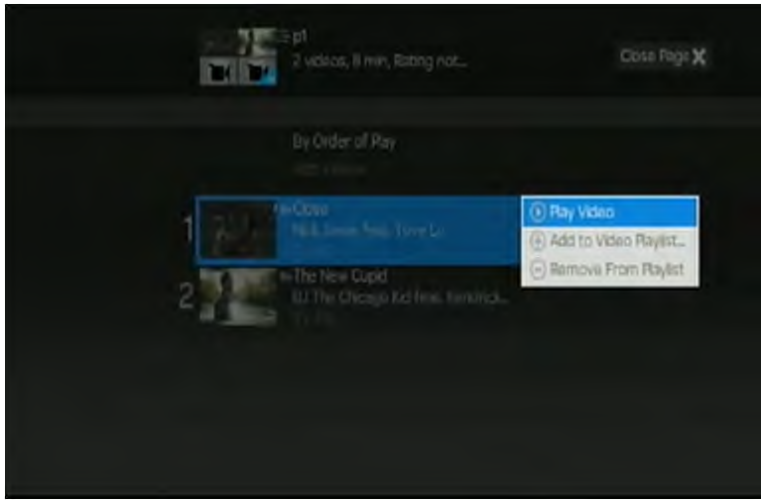
#	The '025 Patent	Stingray Music System/Method
		 

Exhibit 3: Stingray's Infringement of the '025 Patent

#	The '025 Patent	Stingray Music System/Method
		 

#	The '025 Patent	Stingray Music System/Method
		 
8d	transmitting to a client system a media asset listed in the playlist;	The Stingray Music Method transmits to a client system (*e.g.*, an end-user device running the Stingray Music app coupled to a television) a media asset (*e.g.*, the music

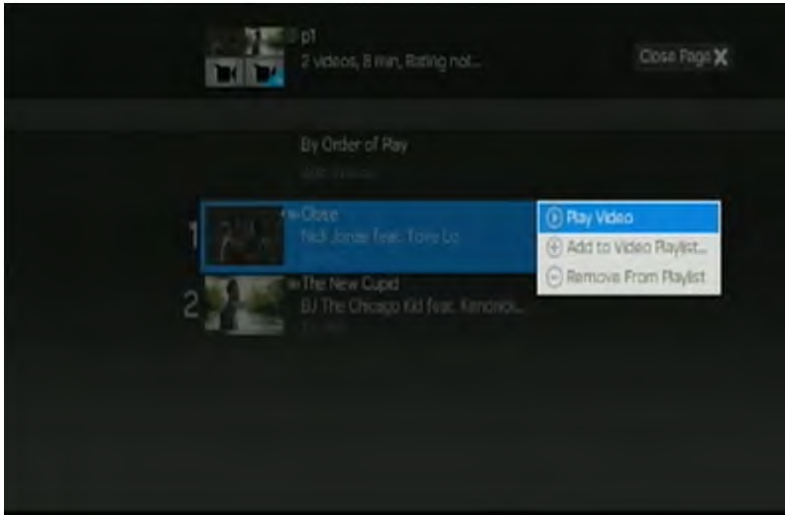
#	The '025 Patent	Stingray Music System/Method
		video for the song entitled "Close") listed in the playlist (*e.g.*, the playlist entitled "p1"). 

Exhibit 3: Stingray's Infringement of the '025 Patent

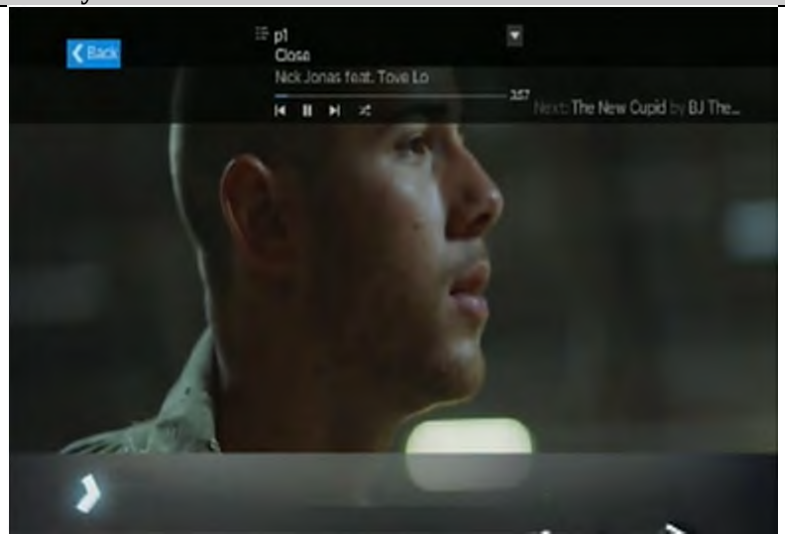
#	The '025 Patent	Stingray Music System/Method
		
8e	transmitting to the client system a video identifier while transmitting to the client system the media asset;	The Stingray Music Method transmits to the client system a video identifier (*e.g.*, a thumbnail identifying a music video for the song entitled "Hello") while transmitting to the client system the media asset (*e.g.*, the music video for the song entitled "Close," which continues to play at the top center of the Stingray Music app screen).

Exhibit 3: Stingray's Infringement of the '025 Patent

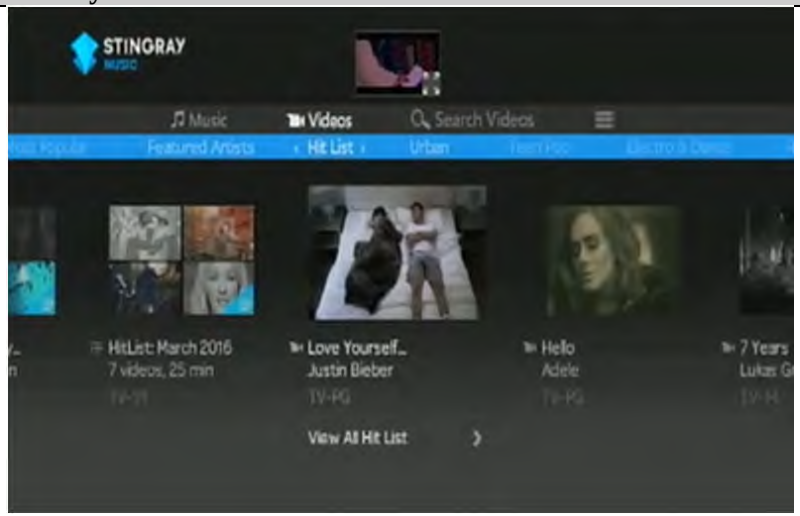
#	The '025 Patent	Stingray Music System/Method
		
8f	while the client system is playing the media asset, (a) enabling a user of the client system to indicate that the user desires to view the video identified by the video identifier and (b) receiving an indication that the user desires to view the video;	The Stingray Music Method, while the client system is playing the media asset (*e.g.*, the music video for the song entitled "Close," which plays at the top center of the Stingray Music app screen), (a) enables a user of the client system to indicate that the user desires to view the video identified by the video identifier (*e.g.*, the music video for the song entitled "Hello") and (b) receives an indication that the user desires to view the video (*e.g.*, the music video for the song entitled "Hello").

Exhibit 3: Stingray's Infringement of the '025 Patent

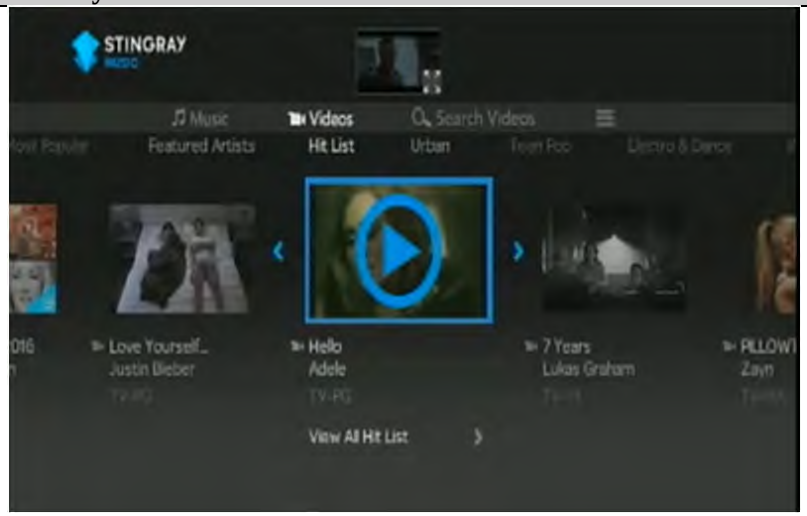
#	The '025 Patent	Stingray Music System/Method
		
8g	receiving from the client system a message including the video identifier, wherein the message is received while at least a portion of the media asset is being transmitted to the client system; and	The Stingray Music Method receives from the client system a message including the video identifier (*e.g.*, the video identifier for the music video for the song entitled "Hello"). The message is received while at least a portion of the media asset is being transmitted to the client system (*e.g.*, while at least a portion of the music video for the song entitled "Close" plays at the top center of the Stingray Music app screen).

Exhibit 3: Stingray's Infringement of the '025 Patent

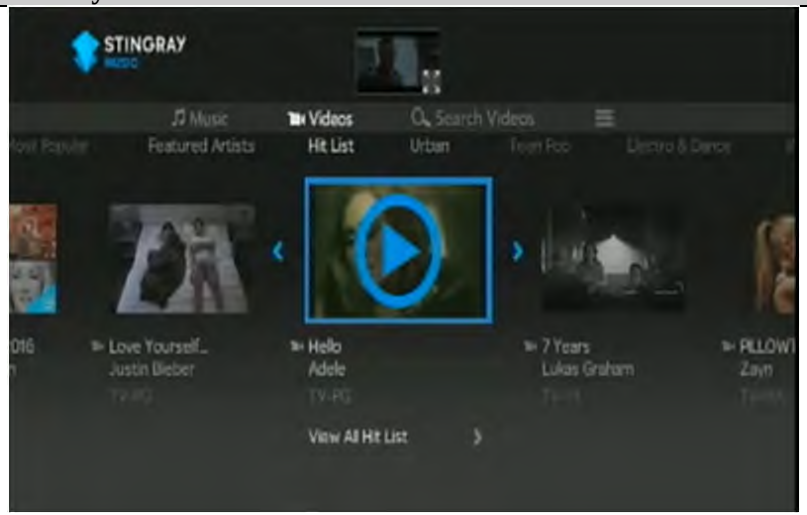
#	The '025 Patent	Stingray Music System/Method
		
8h	in response to receiving the message from the client system, ceasing transmitting the media asset and transmitting the video identified by the video identifier.	The Stingray Music Method, in response to receiving the message from the client system, ceases transmitting the media asset (*e.g.*, the music video for the song entitled "Close") and transmits the video identified by the video identifier (*e.g.*, the music video for the song entitled "Hello").

Exhibit 3: Stingray's Infringement of the '025 Patent

#	The '025 Patent	Stingray Music System/Method
		

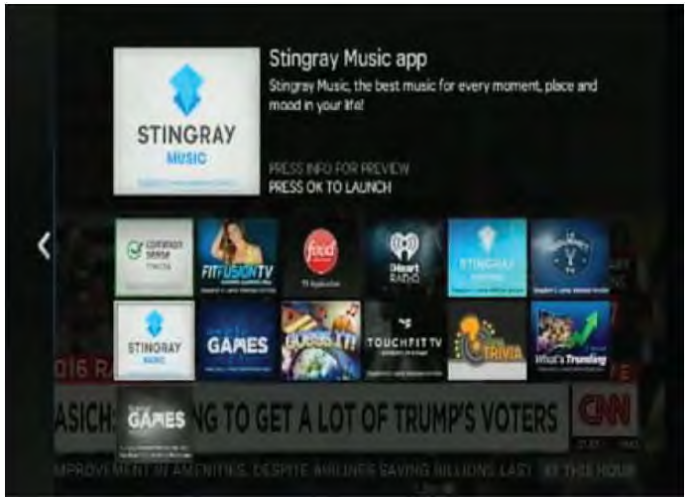
EXHIBIT 4

Stingray's Infringement of the '045 Patent

Exhibit 4: Stingray's Infringement of the '045 Patent

UNITED STATES PATENT NO. 9,351,045 ("the '045 Patent")

This portion of Plaintiff's infringement contentions refers to the Stingray Music TV app that is offered on the AT&T's U-verse® platform as exemplary. These contentions apply to all similar Stingray Music products and services as offered on other platforms[1] (collectively the "Stingray Music System/Method").

#	'045 Patent	Stingray Music System/Method
1a	1. A video-on-demand method, comprising:	The Stingray Music Method, which uses the Stingray Music TV app on AT&T's U-verse® platform, is a video-on-demand method. *See*, *e.g.*, Stingray Music Website "Music Videos on Demand Service," available at http://music.stingray.com/en_US/about/MVOD (last accessed Aug. 6, 2016) ("[t]he Stingray Music service offering now includes Music Videos on Demand") (MC-Stingray00119564). 

[1] These platforms include, for example, cable operator, satellite, Internet Protocol television (IPTV), mobile, and/or website platforms.

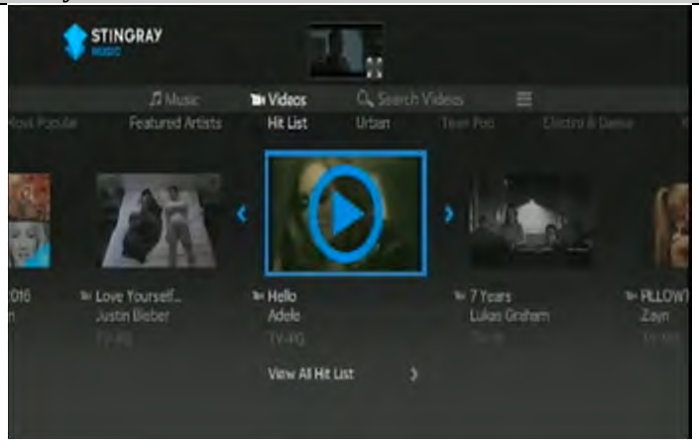
#	'045 Patent	Stingray Music System/Method
		
1b	creating a playlist, wherein the playlist comprises a set of media asset identifiers selected by a user of a client system,	The Stingray Music Method creates a playlist (*e.g.*, a playlist entitled "p1"). The playlist comprises a set of media asset identifiers (*e.g.*, song names identifying music videos for songs entitled "Close" and "The New Cupid") selected by a user of a client system (*e.g.*, an end-user device running the Stingray Music app coupled to a television).

Exhibit 4: Stingray's Infringement of the '045 Patent

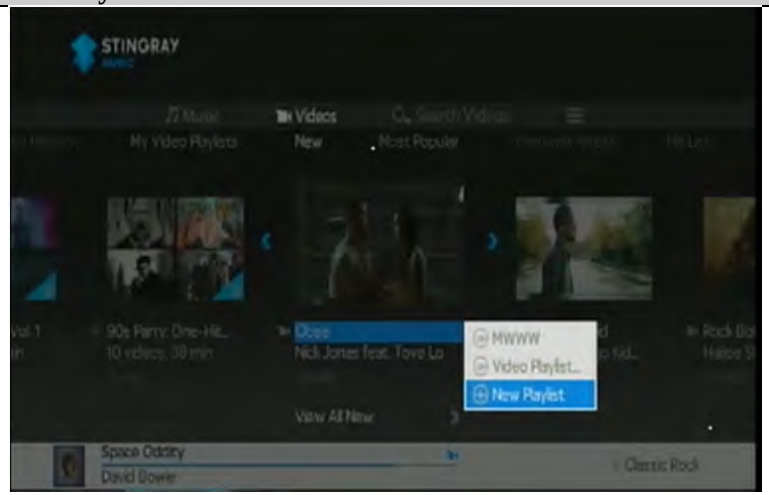
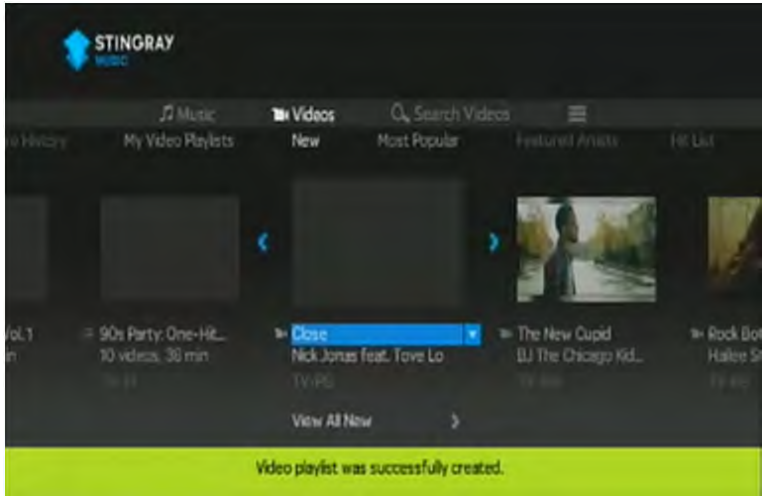
#	'045 Patent	Stingray Music System/Method
		 

Exhibit 4: Stingray's Infringement of the '045 Patent

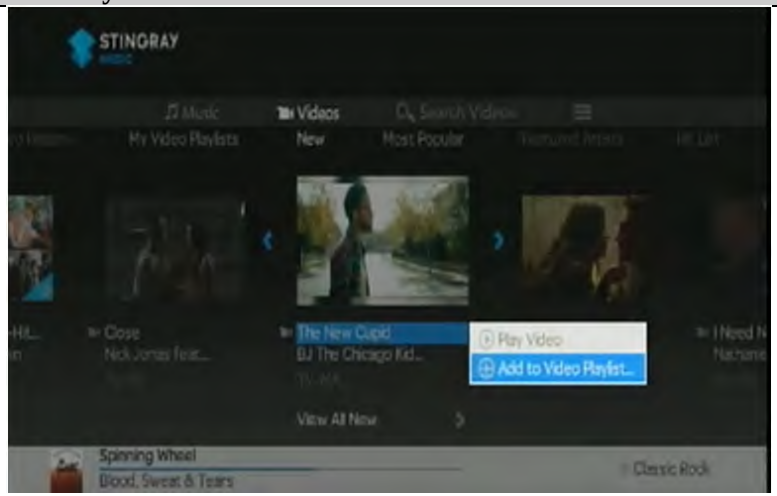
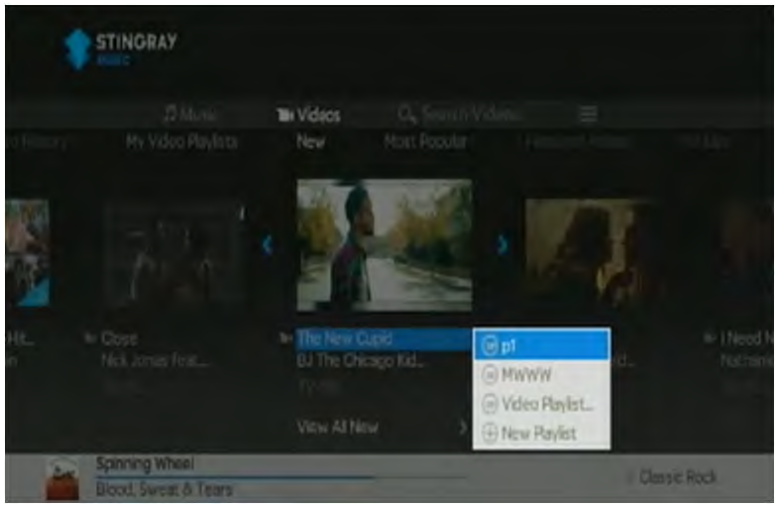
#	'045 Patent	Stingray Music System/Method
		 

Exhibit 4: Stingray's Infringement of the '045 Patent

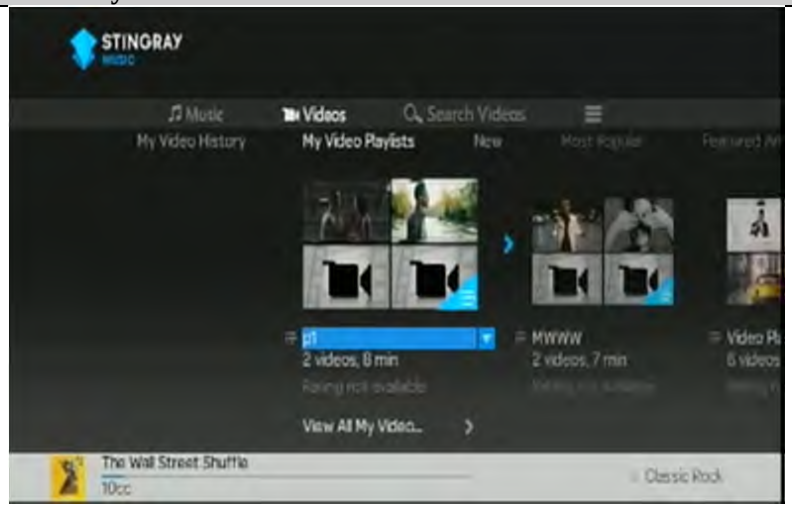
#	'045 Patent	Stingray Music System/Method
		
1c	each media asset identifier included in the set of media asset identifiers identifying a media asset;	In the Stingray Music Method, each media asset identifier included in the set of media asset identifiers identifies a media asset (*e.g.*, each of the song names in the playlist entitled "p1" identifies a music video for a song entitled "Close" or "The New Cupid").

Exhibit 4: Stingray's Infringement of the '045 Patent

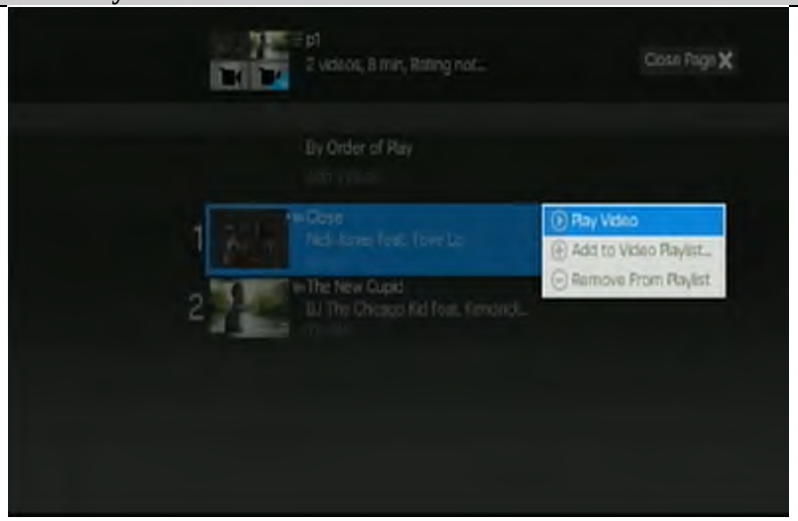
#	'045 Patent	Stingray Music System/Method
		
1d	receiving information transmitted by the client system, the information indicating that a user of the client system desires to view a media asset identified by a media asset identifier included in the playlist;	The Stingray Music Method receives information transmitted by the client system, the information indicating that a user of the client system desires to view a media asset (*e.g.*, the music video for the song entitled "Close") identified by a media asset identifier (*e.g.*, the song name identifying a music video for the song entitled "Close") included in the playlist (*e.g.*, the playlist entitled "p1").

Exhibit 4: Stingray's Infringement of the '045 Patent

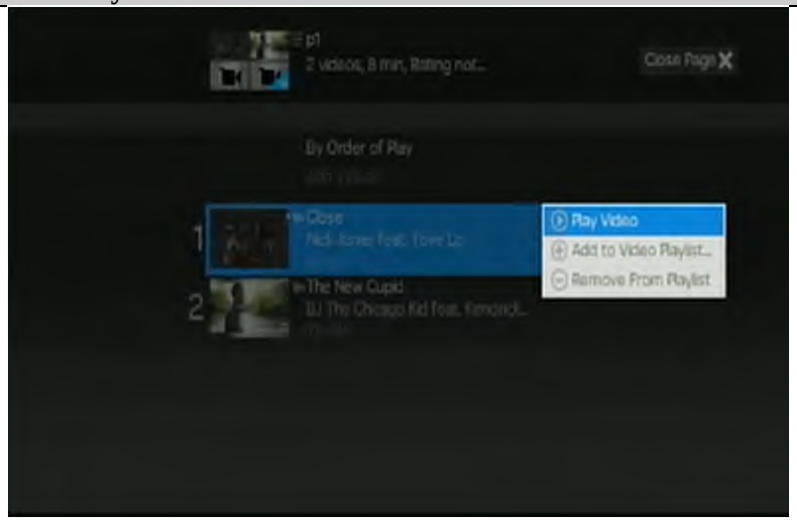
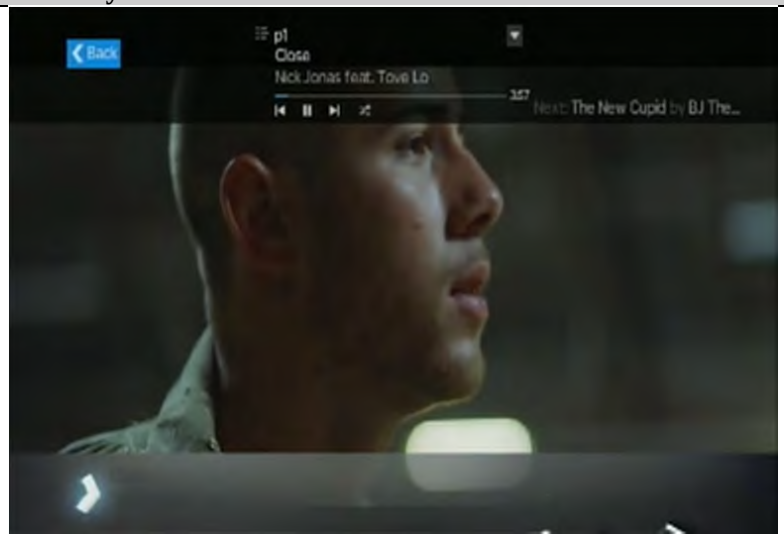
#	'045 Patent	Stingray Music System/Method
		
1e	in response to receiving the information, transmitting to the client system the media asset desired by the user;	The Stingray Music Method, in response to receiving the information, transmits to the client system the media asset desired by the user (*e.g.*, the music video for the song entitled "Close").

Exhibit 4: Stingray's Infringement of the '045 Patent

#	'045 Patent	Stingray Music System/Method
		
1f	transmitting to the client system a video identifier while transmitting to the client system the desired media asset, the video identifier identifying a video;	The Stingray Music Method transmits to the client system a video identifier (*e.g.*, a thumbnail image identifying a music video for the song entitled "Hello") while transmitting to the client system the desired media asset (*e.g.*, the music video for the song entitled "Close," which continues to play at the top center of the Stingray Music app screen), the video identifier identifying a video (*e.g.*, the music video for the song entitled "Hello").

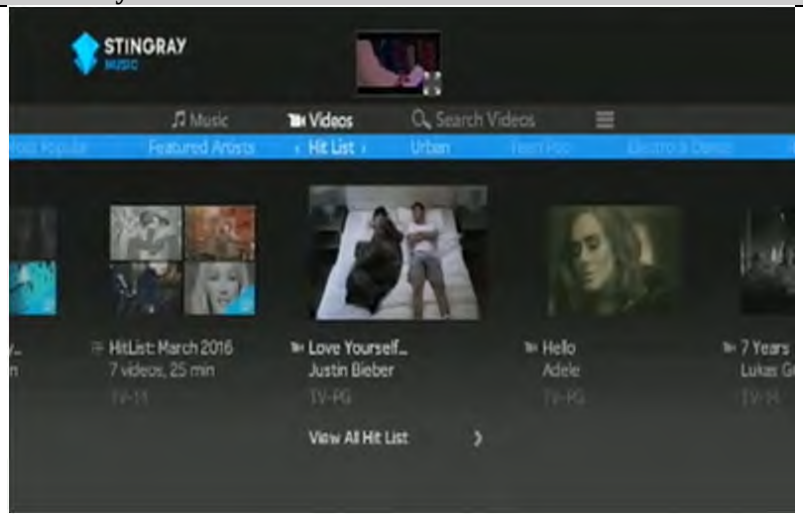
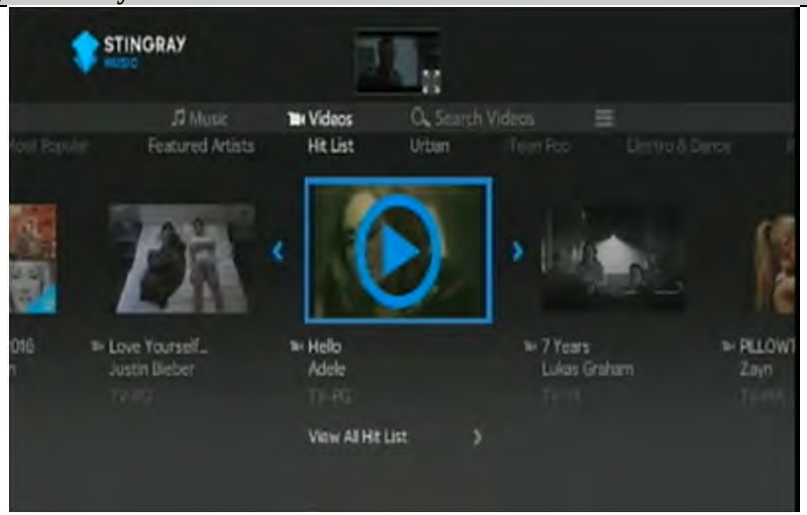
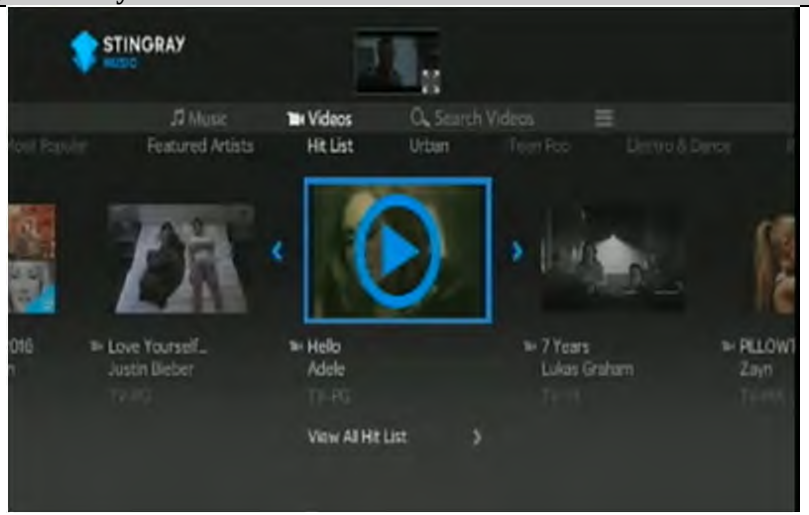
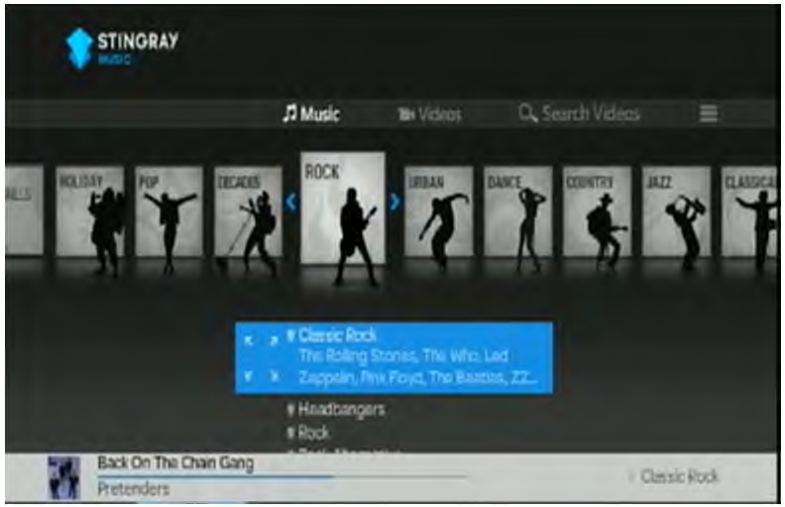
#	'045 Patent	Stingray Music System/Method
		
1g	while the client system is playing the desired media asset enabling the user of the client system to indicate that the user desires to view the video identified by the video identifier, and then receiving from the client system a message comprising information indicating that the user desires to view the video identified by the video identifier, wherein the message is received while at least a portion of the media asset is being transmitted to the client system; and	The Stingray Music Method, while the client system is playing the desired media asset (*e.g.*, the music video for the song entitled "Close," which plays at the top center of the Stingray Music app screen), enables the user of the client system to indicate that the user desires to view the video identified by the video identifier (*e.g.*, the music video for the song entitled "Hello"). The Stingray Music Method then receives from the client system a message comprising information indicating that the user desires to view the video identified by the video identifier (*e.g.*, the music video for the song entitled "Hello"). The message is received while at least a portion of the media asset is being transmitted to the client system (*e.g.*, while at least a portion of the music video for the song entitled "Close" plays at the top center of the Stingray Music app screen).

Exhibit 4: Stingray's Infringement of the '045 Patent

#	'045 Patent	Stingray Music System/Method
		
1h	in response to receiving the message from the client system, ceasing transmitting to the client system the media asset and transmitting to the client system video data corresponding to the video identified by the video identifier.	The Stingray Music Method, in response to receiving the message from the client system, ceases transmitting to the client system the media asset (*e.g.*, the music video for the song entitled "Close") and transmits to the client system video data corresponding to the video identified by the video identifier (*e.g.*, video data corresponding to the music video for the song entitled "Hello").

#	'045 Patent	Stingray Music System/Method
		
2a	The video-on-demand method of claim 1	*See* claim 1, above.
2b	wherein the client system comprises a set-top-box and a television connected to the set-top-box.	In the Stingray Music Method, the client system (*e.g.*, an end-user device running the Stingray Music app coupled to a television) comprises a set-top-box and a television connected to the set-top-box.

#	'045 Patent	Stingray Music System/Method
		
3a	The video-on-demand method of claim 1,	*See* claim 1, above.
3b	wherein each said media asset identifier identifies a music video.	In the Stingray Music Method, each media asset identifier identifies a music video (*e.g.*, song names identifying music videos for songs entitled "Close" and "The New Cupid").
4a	The video-on-demand method of claim 1,	*See* claim 1, above.
4b	wherein the video is a music video.	In the Stingray Music System, the video is a music video (*e.g.*, the music video for the song "Close").
5a	The video-on-demand method of claim 1, further comprising:	*See* claim 1, above.
5b	selecting a song for one of a plurality of music channels, the one	The Stingray Music Method selects a song (*e.g.*, the song "Back on the Chain Gang" or "Workin' for MCA") for one of a plurality of music channels (*e.g.*, a "Classic

#	'045 Patent	Stingray Music System/Method
	of the plurality of music channels being associated with a genre of music;	Rock" channel). *See*, *e.g.*, "Stingray Music Brings All Good Vibes to AT&T U-verse Customers," Oct. 29, 2014, available at about.att.com/story/stingray_music_app_on_uverse_tv.html (last accessed Aug. 4, 2016) ("the new Stingray Music app, available at no additional charge, will have more than 100 streaming music channels") (MC-Stingray00119568); Stingray Website, "Continuous Music Service," available at http://music.stingray.com/en_US/about/baseService (last accessed Aug. 4, 2016) ("The Stingray Music continuous music network provides its listeners with a selection of close to fifty music channels, all commercial-free and uninterrupted, that cover a large variety of music genres, from rock to pop to jazz, to classical or international, delivered in pristine quality digital audio.") (MC-Stingray00119561). The one of the plurality of music channels (*e.g.*, the "Classic Rock" channel) is associated with a genre of music (*e.g.*, the classic rock genre). 

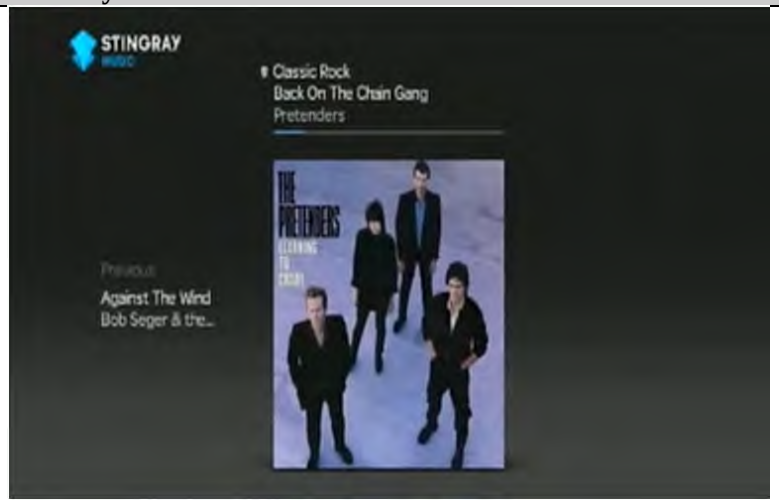
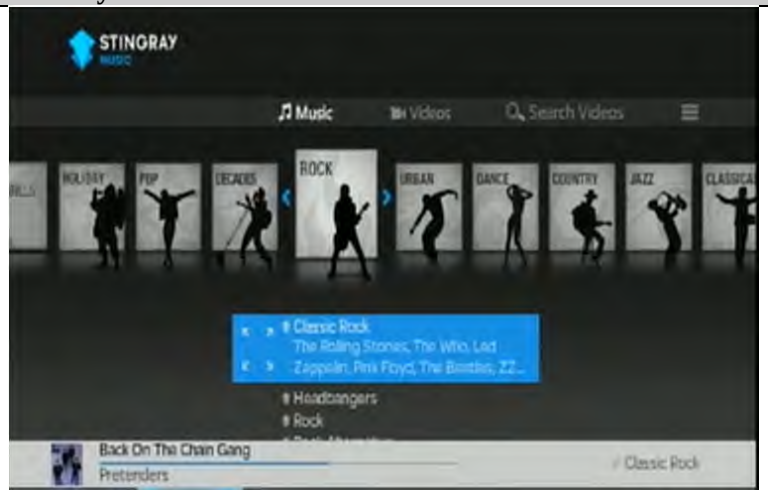
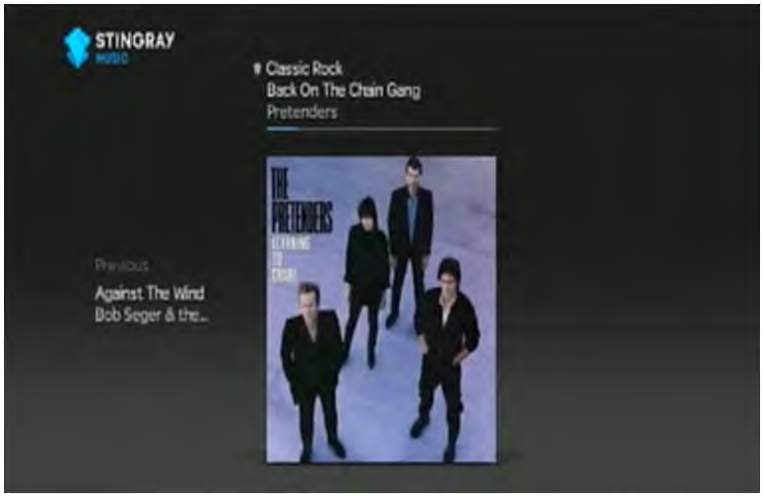
#	'045 Patent	Stingray Music System/Method
		
5c	transmitting simultaneously to a plurality of client systems audio data corresponding to the selected song, wherein each of the plurality of client systems is configured to use the audio data to play the song so that each user of each of the plurality of client systems can listen to the song, and the plurality of client systems comprises the first recited client system and a second client system;	The Stingray Music Method transmits simultaneously to a plurality of client systems (*e.g.*, end-user devices running the Stingray Music app coupled to televisions) audio data corresponding to the selected song (*e.g.*, the song "Back on the Chain Gang" or "Workin' for MCA"). *See, e.g.*, Stingray Website, "Support," available at http://music.stingray.com/en_US/about/support (last accessed Aug. 4, 2016) ("The Stingray Music website at Stingray Music.tv also has a listing of all songs played in the last 24 hours for each of the Stingray Music channels.") (MC-Stingray00119565). Each of the plurality of client systems is configured to use the audio data to play the song (*e.g.*, the song "Back on the Chain Gang" or "Workin' for MCA") so that each user of each of the plurality of client systems can listen to the song. *See id.* The plurality of client systems includes a first client system and a second client system (*e.g.*, first and second end-user devices running the Stingray Music app coupled to televisions).

Exhibit 4: Stingray's Infringement of the '045 Patent

#	'045 Patent	Stingray Music System/Method
		 
5d	while transmitting the audio data to the plurality of client systems, transmitting to the second client	The Stingray Music Method, while transmitting the audio data (*e.g.*, the audio data for the song "Workin' for MCA") to the plurality of client systems, transmits to the second client system a second video identifier identifying a video (*e.g.*, a thumbnail

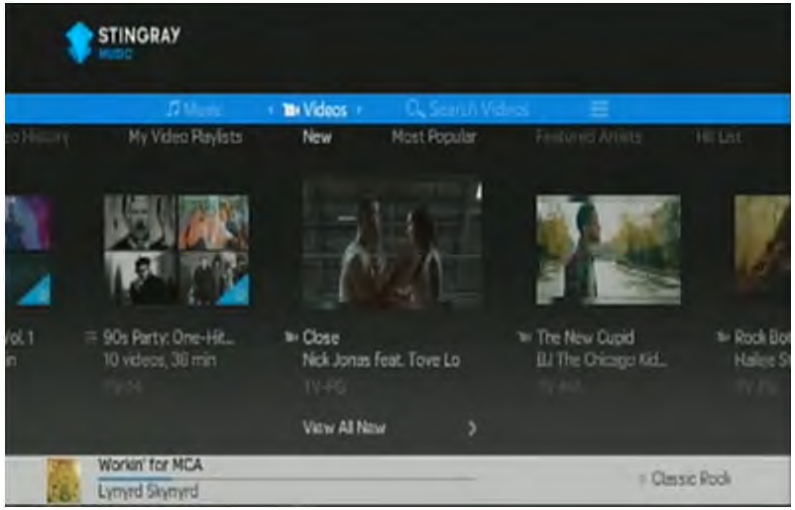
#	'045 Patent	Stingray Music System/Method
	system a second video identifier identifying a second video;	identifying a music video for the song "Close"). 
5e	while the second client system is playing the song enabling the user of the second client system to indicate that the user desires to view the second video identified by the second video identifier, and then receiving from the second client system a message comprising information indicating that the user desires to view the second video identified by the second video identifier, wherein the message is received while at least a portion of the audio data is being transmitted to the second client system; and	The Stingray Music Method, while the second client system is playing the song (*e.g.*, the song "Workin' for MCA"), enables the user of the second client system to indicate that the user desires to view the second video identified by the second video identifier (*e.g.*, the music video for the song "Close"). The Stingray Music Method then receives from the second client system a message comprising information indicating that the user desires to view the second video identified by the second video identifier (*e.g.*, the music video for the song "Close"). The message is received while at least a portion of the audio data (*e.g.*, the audio data for the song "Workin' for MCA") is being transmitted to the first client system.

Exhibit 4: Stingray's Infringement of the '045 Patent

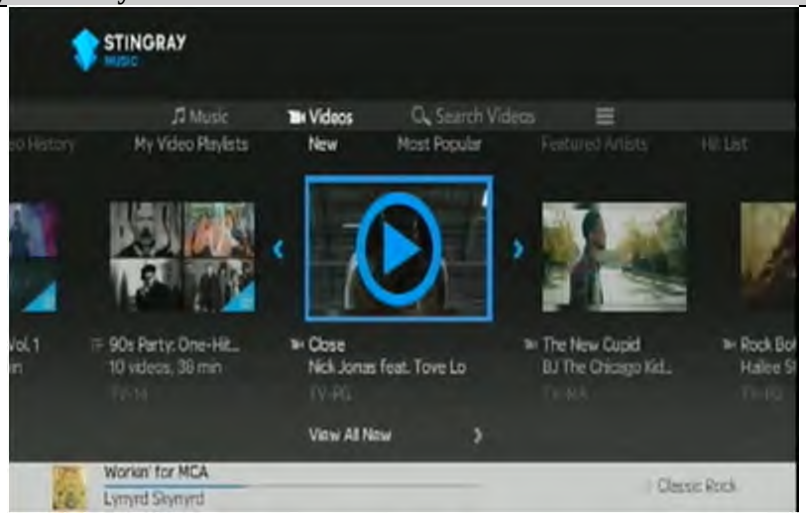
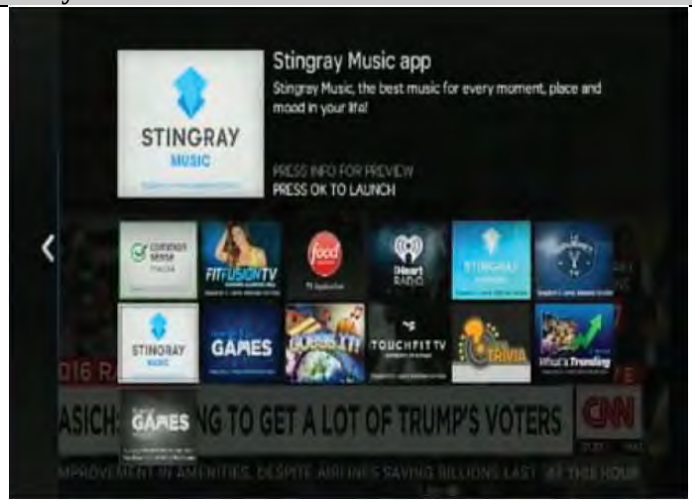
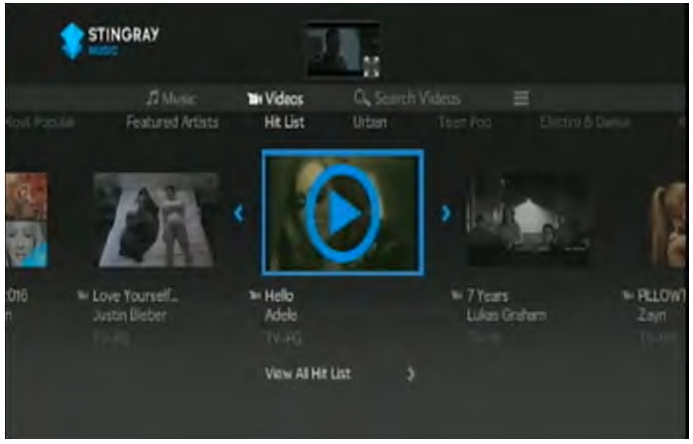
#	'045 Patent	Stingray Music System/Method
		
5f	in response to receiving the message from the second client system, transmitting to the second client system video data corresponding to the second video identified by the second video identifier.	The Stingray Music Method, in response to receiving the message from the second client system, transmits to the second client system video data corresponding to the video identified by the video identifier (*e.g.*, video data corresponding to the music video for the song "Close").

Exhibit 4: Stingray's Infringement of the '045 Patent

#	'045 Patent	Stingray Music System/Method
		
6a	6. A video-on-demand system, the video on demand system comprising:	The Stingray Music System, which includes the Stingray Music TV app on AT&T's U-verse® platform, is a video-on-demand system. *See*, *e.g.*, Stingray Music Website "Music Videos on Demand Service," available at http://music.stingray.com/en_US/about/MVOD (last accessed Aug. 6, 2016) ("[t]he Stingray Music service offering now includes Music Videos on Demand") (MC-Stingray00119564).

Exhibit 4: Stingray's Infringement of the '045 Patent

#	'045 Patent	Stingray Music System/Method
		 
6b	a transmitter;	The Stingray Music System comprises a transmitter.
6c	a receiver; and	The Stingray Music System comprises a receiver.

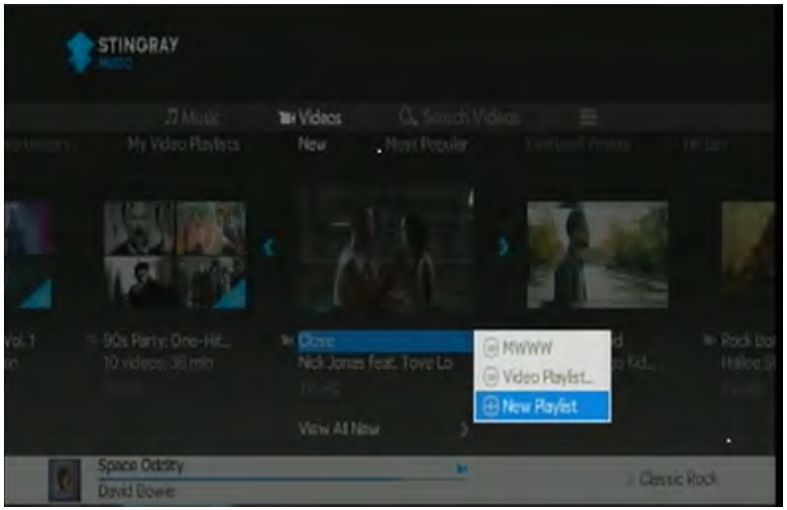
#	'045 Patent	Stingray Music System/Method
6d	a computer system coupled to the transmitter and the receiver, wherein the computer system is configured to perform a method comprising:	The Stingray Music System comprises a computer system coupled to the transmitter and the receiver, and the computer system is configured to perform a method.
6e	creating a playlist, wherein the playlist comprises a set of media asset identifiers selected by a user of a client system,	The computer system of the Stingray Music System creates a playlist (*e.g.*, a playlist entitled "p1"). The playlist comprises a set of media asset identifiers (*e.g.*, media asset identifiers identifying music videos for songs entitled "Close" and "The New Cupid") selected by a user of a client system (*e.g.*, an end-user device running the Stingray Music app coupled to a television). 

Exhibit 4: Stingray's Infringement of the '045 Patent

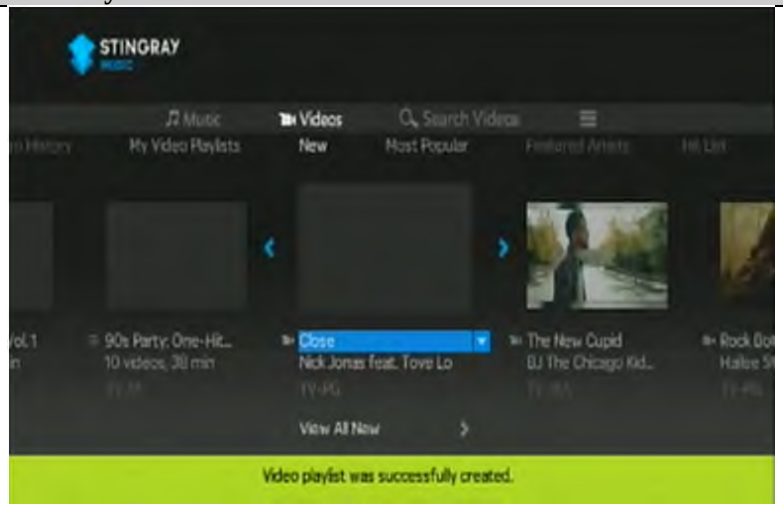
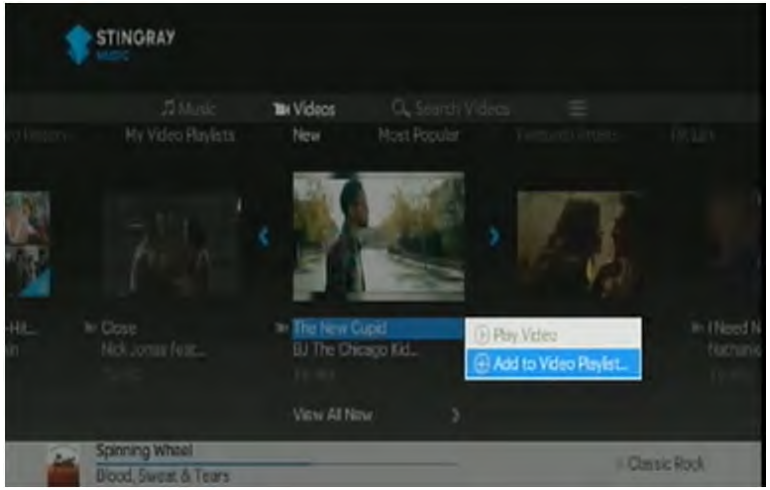
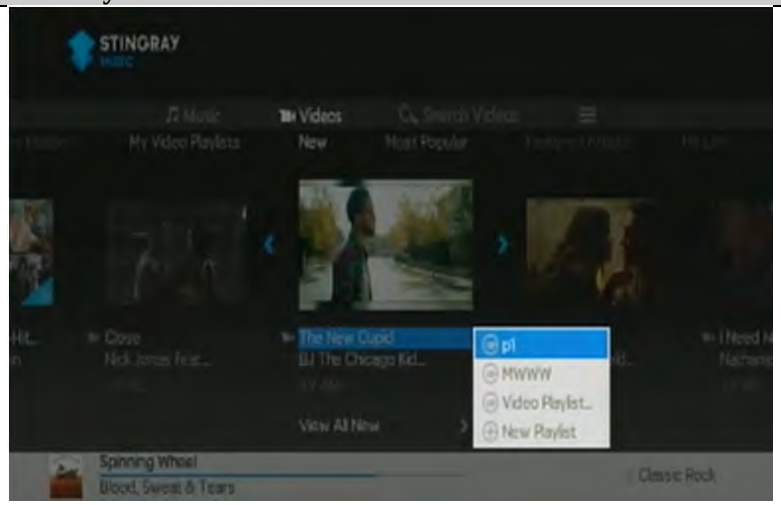
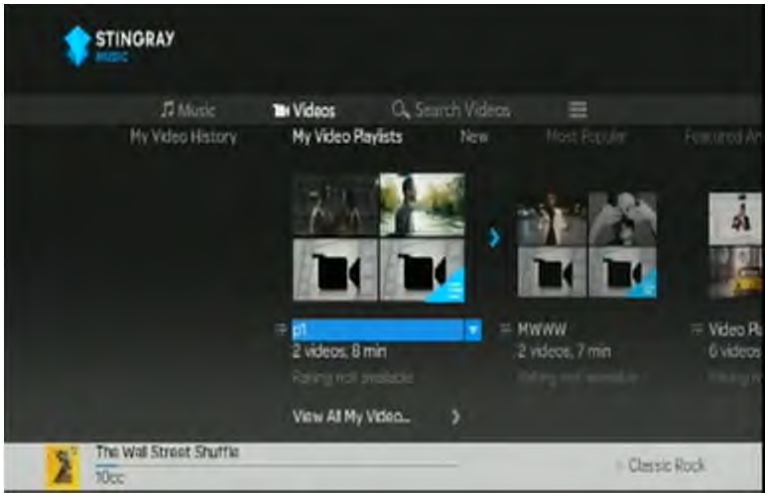
#	'045 Patent	Stingray Music System/Method
		 

Exhibit 4: Stingray's Infringement of the '045 Patent

#	'045 Patent	Stingray Music System/Method
		 
6f	each media asset identifier included in the set of media asset identifiers	In the Stingray Music System, each media asset identifier included in the set of media asset identifiers identifies a media asset (*e.g.*, each of the song names in the

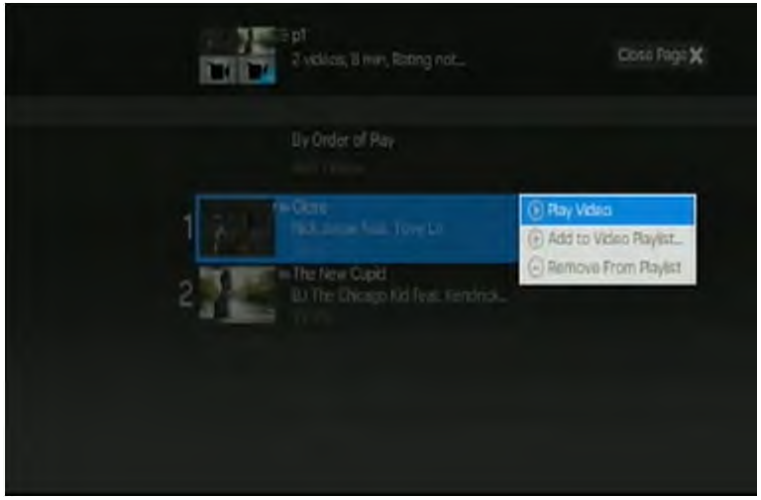
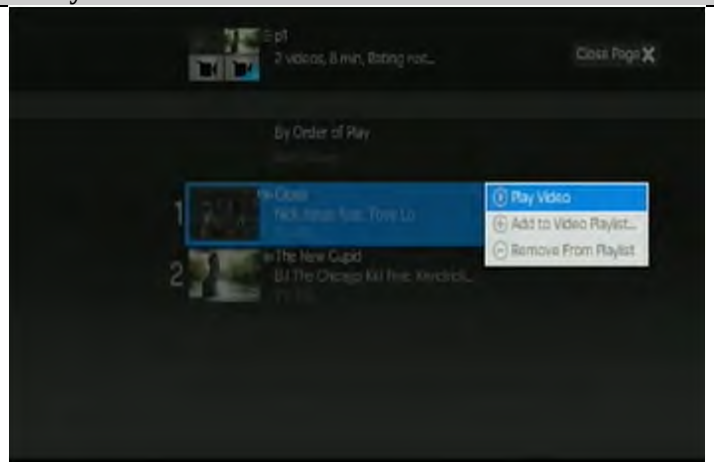
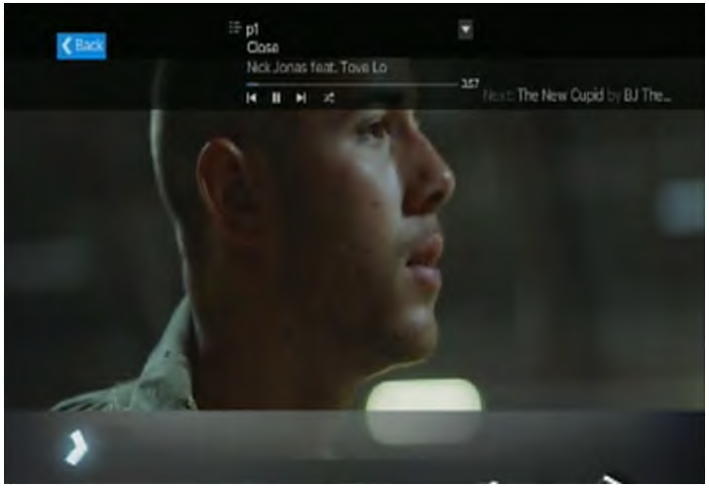
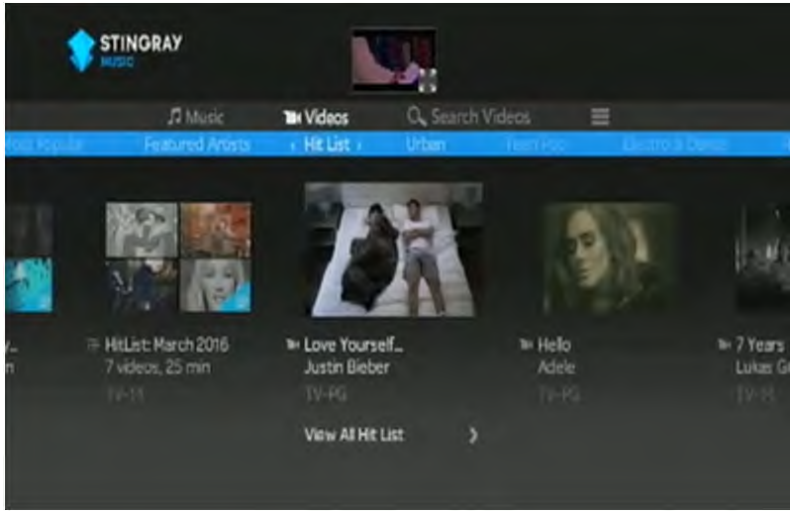
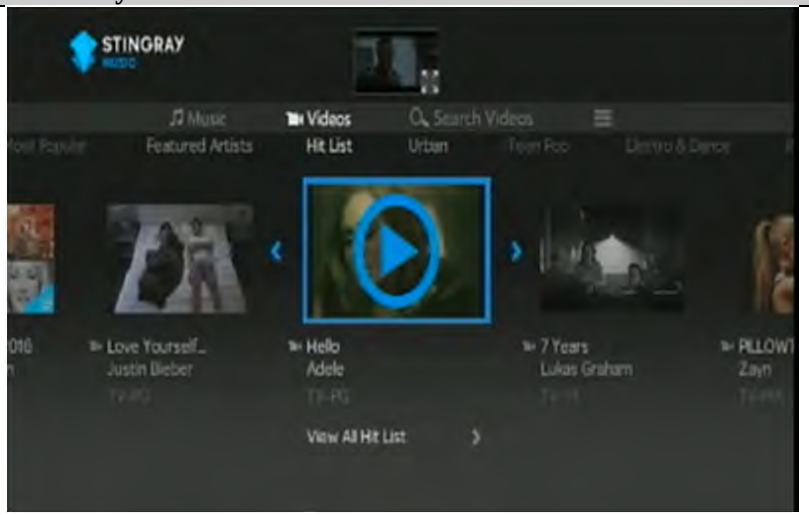
#	'045 Patent	Stingray Music System/Method
	identifying a media asset;	playlist entitled "p1" identifies a music video for a song entitled "Close" or "The New Cupid"). 
6g	in response to receiving from the client system information indicating that a user of the client system desires to view a media asset identified by a media asset identifier included in the playlist, transmitting to the client system the media asset desired by the user;	The computer system of the Stingray Music System, in response to receiving from the client system information indicating that a user of the client system desires to view a media asset (*e.g.*, the music video for the song entitled "Close") identified by a media asset identifier (*e.g.*, the song name identifying the music video for the song entitled "Close") included in the playlist (*e.g.*, the playlist entitled "p1"), transmits to the client system the media asset desired by the user (*e.g.*, the music video for the song entitled "Close").

Exhibit 4: Stingray's Infringement of the '045 Patent

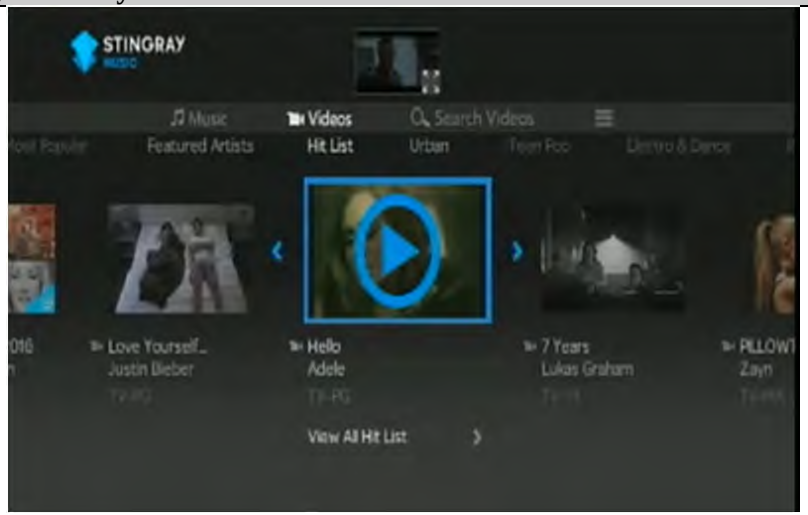
#	'045 Patent	Stingray Music System/Method
		 
6h	transmitting to the client system a video identifier while transmitting to the client system the desired media asset, the video identifier identifying	The computer system of the Stingray Music System transmits to the client system a video identifier (*e.g.*, a thumbnail identifying a music video for the song entitled "Hello") while transmitting to the client system the desired media asset (*e.g.*, the music video for the song entitled "Close," which continues to play at the top center

#	'045 Patent	Stingray Music System/Method
	a video;	of the Stingray Music app screen), the video identifier identifying a video (*e.g.*, the music video for the song entitled "Hello"). 
6i	while the client system is playing the desired media asset enabling the user of the client system to indicate that the user desires to view the video identified by the video identifier, and	The computer system of the Stingray Music System, while the client system is playing the desired media asset (*e.g.*, the music video for the song entitled "Close," which plays at the top center of the Stingray Music app screen), enables the user of the client system to indicate that the user desires to view the video identified by the video identifier (*e.g.*, the music video for the song entitled "Hello").

#	'045 Patent	Stingray Music System/Method
		
6j	then in response to receiving from the client system a message comprising information indicating that the user desires to view the video identified by the video identifier, ceasing transmitting to the client system the media asset and transmitting to the client system video data corresponding to the video identified by the video identifier.	The computer system of the Stingray Music System then, in response to receiving from the client system a message comprising information indicating that the user desires to view the video identified by the video identifier (*e.g.*, the music video for the song entitled "Hello"), ceases transmitting to the client system the media asset (*e.g.*, the music video for the song entitled "Close") and transmits to the client system video data corresponding to the video identified by the video identifier (*e.g.*, video data corresponding to the music video for the song entitled "Hello").

#	'045 Patent	Stingray Music System/Method
		
7a	The video-on-demand system of claim 6,	*See* claim 6, above.
7b	wherein the client system comprises a set-top-box and a television connected to the set-top-box.	In the Stingray Music System, the client system (*e.g.*, the end-user device running the Stingray Music TV app coupled to a television) comprises a set-top-box and a television connected to the set-top-box.

Exhibit 4: Stingray's Infringement of the '045 Patent

#	'045 Patent	Stingray Music System/Method
		
8a	The video-on-demand system of claim 6,	*See* claim 6, above.
8b	wherein each said media asset identifier identifies a music video.	In the Stingray Music System, each media asset identifier identifies a music video (*e.g.*, song names identifying music videos for songs entitled "Close" and "The New Cupid").
9a	The video-on-demand system of claim 6,	*See* claim 6, above.
9b	wherein the video is a music video.	In the Stingray Music System, the video is a music video (*e.g.*, the music video for the song "Close").
10a	10. The video-on-demand system of claim 6, wherein the method further comprises:	*See* claim 6, above.

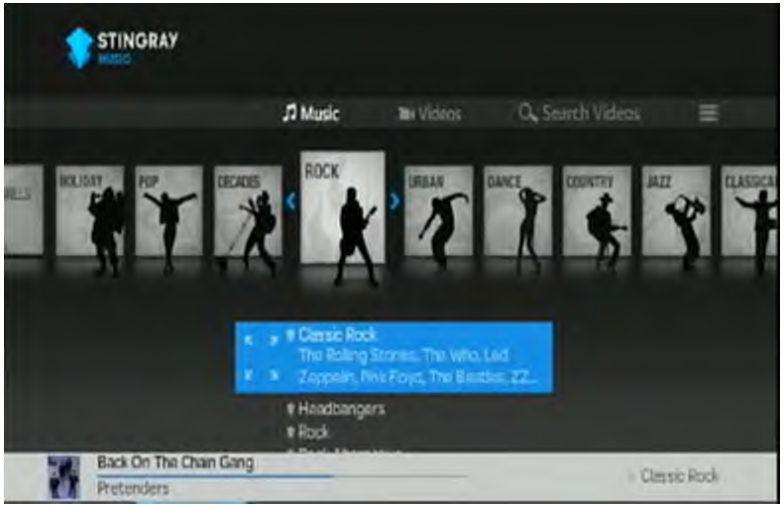
#	'045 Patent	Stingray Music System/Method
10b	selecting a song for one of a plurality of music channels, the one of the plurality of music channels being associated with a genre of music;	The Stingray Music System provides access to a plurality of streaming music channels. *See, e.g.*, "Stingray Music Brings All Good Vibes to AT&T U-verse Customers," Oct. 29, 2014, available at about.att.com/story/stingray_music_app_on_uverse_tv.html (last accessed Aug. 4, 2016) ("the new Stingray Music app, available at no additional charge, will have more than 100 streaming music channels") (MC-Stingray00119568); Stingray Website, "Continuous Music Service," available at http://music.stingray.com/en_US/about/baseService (last accessed Aug. 4, 2016) ("The Stingray Music continuous music network provides its listeners with a selection of close to fifty music channels, all commercial-free and uninterrupted, that cover a large variety of music genres, from rock to pop to jazz, to classical or international, delivered in pristine quality digital audio.") (MC-Stingray00119561). The Stingray Music system selects a song (*e.g.*, the song "Back on the Chain Gang" or "Workin' for MCA") for one of a plurality of music channels (*e.g.*, a "Classic Rock" channel). The one of the plurality of music channels (*e.g.*, the "Classic Rock" channel) is associated with a genre of music (*e.g.*, the classic rock genre). 

Exhibit 4: Stingray's Infringement of the '045 Patent

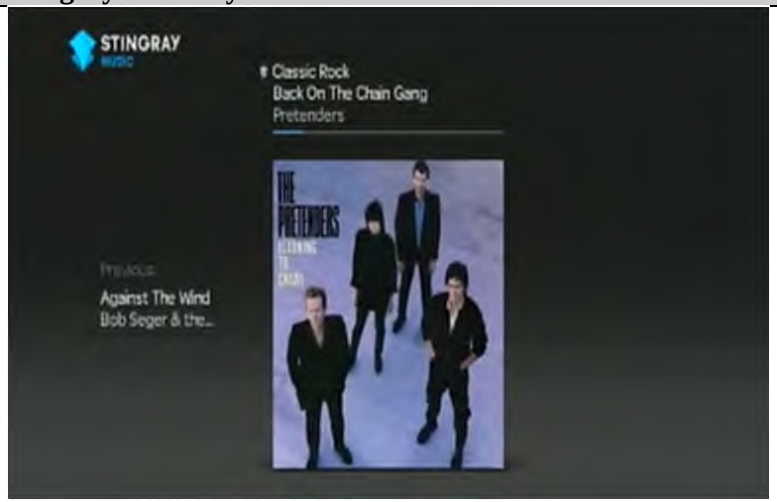
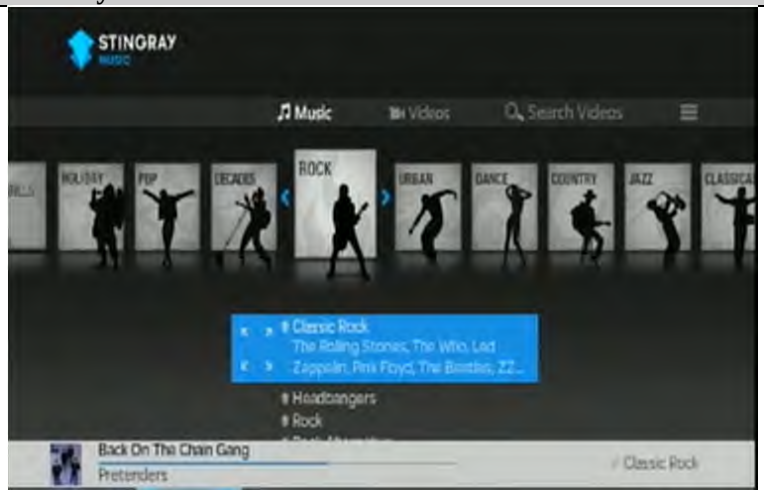
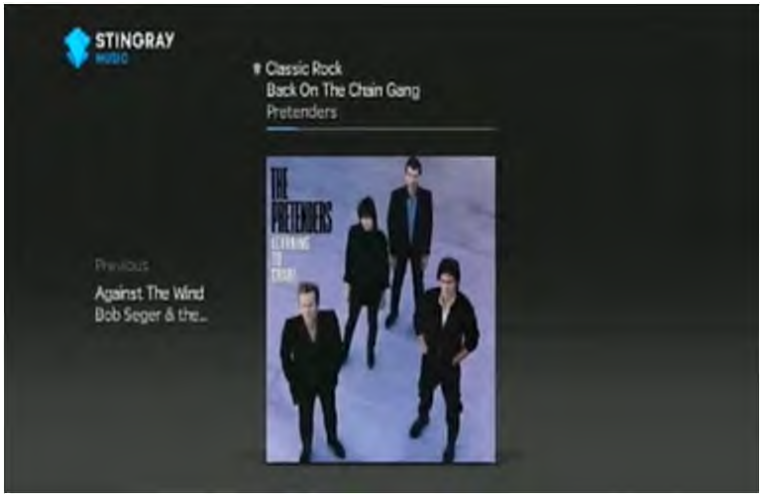
#	'045 Patent	Stingray Music System/Method
		
10c	transmitting simultaneously to a plurality of client systems audio data corresponding to the selected song, wherein each of the plurality of client systems is configured to use the audio data to play the song so that each user of each of the plurality of client systems can listen to the song, and the plurality of client systems comprises the first recited client system and a second client system;	The Stingray Music System transmits simultaneously to a plurality of client systems (*e.g.*, end-user devices running the Stingray Music app coupled to a television) audio data corresponding to the selected song (*e.g.*, the song "Back on the Chain Gang" or "Workin' for MCA"). *See, e.g.*, Stingray Website, "Support," available at http://music.stingray.com/en_US/about/support (last accessed Aug. 4, 2016) ("The Stingray Music website at Stingray Music.tv also has a listing of all songs played in the last 24 hours for each of the Stingray Music channels.") (MC-Stingray00119565). Each of the plurality of client systems is configured to use the audio data to play the song (*e.g.*, the song "Back on the Chain Gang" or "Workin' for MCA") so that each user of each of the plurality of client systems can listen to the song. *See id.* The plurality of client systems includes a first client system and a second client system (*e.g.*, first and second end-user devices running the Stingray Music app coupled to televisions).

Exhibit 4: Stingray's Infringement of the '045 Patent

#	'045 Patent	Stingray Music System/Method
		 
10d	while transmitting the audio data to the plurality of client systems, transmitting to the second client	The Stingray Music System, while transmitting the audio data (*e.g.*, the audio data for the song "Workin' for MCA") to the plurality of client systems, transmits to the second client system a second video identifier identifying a video (*e.g.*, a thumbnail

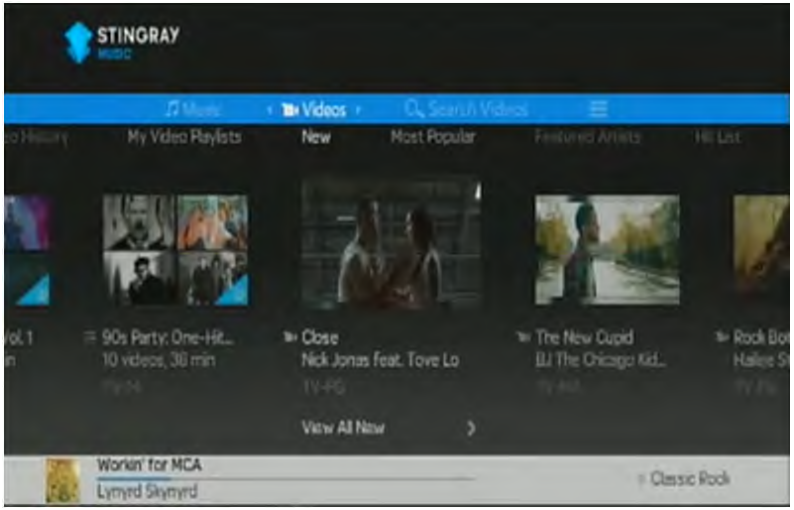
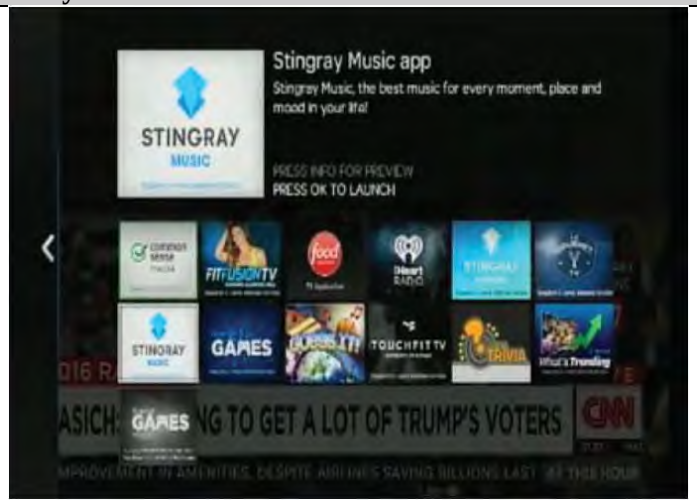
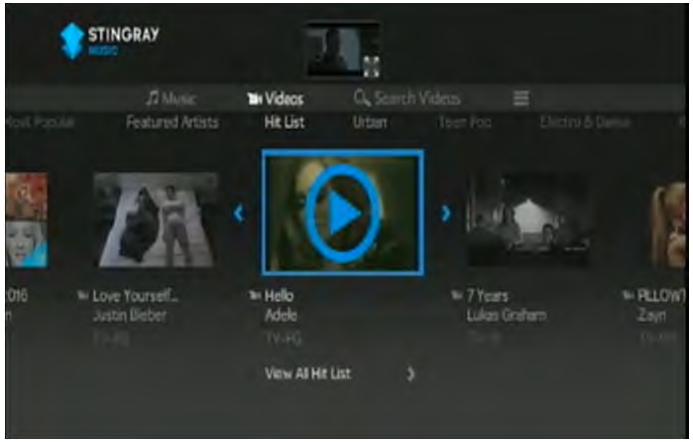
#	'045 Patent	Stingray Music System/Method
	system a second video identifier identifying a second video;	identifying a music video for the song "Close"). 
10e	while the second client system is playing the song enabling the user of the second client system to indicate that the user desires to view the second video identified by the second video identifier, and then in response to receiving from the second client system a message comprising information indicating that the user desires to view the second video identified by the second video identifier, transmitting to the second client system video data corresponding to the second video identified by the second video	The Stingray Music System, while the second client system is playing the song (*e.g.*, the song "Workin' for MCA"), enables the user of the second client system to indicate that the user desires to view the second video identified by the second video identifier (*e.g.*, the music video for the song "Close"). The Stingray Music System then receives from the second client system a message comprising information indicating that the user desires to view the second video identified by the second video identifier (*e.g.*, the music video for the song "Close"). The Stingray Music System transmits to the second client system (*e.g.*, the second device running the Stingray Music app) video data corresponding to the second video identified by the second video identifier (*e.g.*, video data corresponding to the music video for the song "Close").

Exhibit 4: Stingray's Infringement of the '045 Patent

#	'045 Patent	Stingray Music System/Method
	identifier.	
11a	11. A video-on-demand method, comprising:	The Stingray Music Method, which uses the Stingray Music TV app on AT&T's U-verse® platform, is a video-on-demand method. *See*, *e.g.*, Stingray Music Website "Music Videos on Demand Service," available at http://music.stingray.com/en_US/about/MVOD (last accessed Aug. 6, 2016) ("[t]he Stingray Music service offering now includes Music Videos on Demand") (MC-Stingray00119564).

#	'045 Patent	Stingray Music System/Method
		 
11b	selecting a song for one of a plurality of music channels, the one of the plurality of music channels being associated with a genre of	The Stingray Music Method provides access to a plurality of streaming music channels. *See, e.g.*, "Stingray Music Brings All Good Vibes to AT&T U-verse Customers," Oct. 29, 2014, available at about.att.com/story/stingray_music_app_on_uverse_tv.html (last accessed Aug. 4,

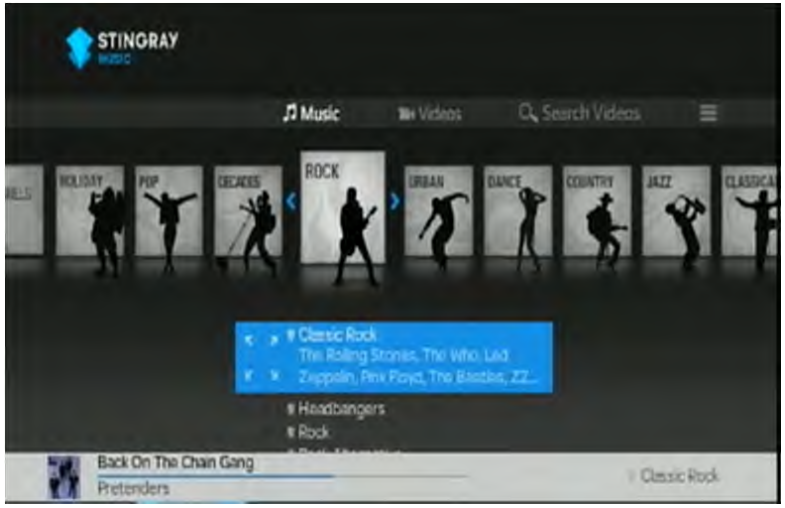
#	'045 Patent	Stingray Music System/Method
	music;	2016) ("the new Stingray Music app, available at no additional charge, will have more than 100 streaming music channels") (MC-Stingray00119568); Stingray Website, "Continuous Music Service," available at http://music.stingray.com/en_US/about/baseService (last accessed Aug. 4, 2016) ("The Stingray Music continuous music network provides its listeners with a selection of close to fifty music channels, all commercial-free and uninterrupted, that cover a large variety of music genres, from rock to pop to jazz, to classical or international, delivered in pristine quality digital audio.") (MC-Stingray00119561). The Stingray Music Method selects a song (*e.g.*, the song "Back on the Chain Gang" or "Workin' for MCA") for one of a plurality of music channels (*e.g.*, a "Classic Rock" channel). The one of the plurality of music channels (*e.g.*, the "Classic Rock" channel) is associated with a genre of music (*e.g.*, the classic rock genre). 

Exhibit 4: Stingray's Infringement of the '045 Patent

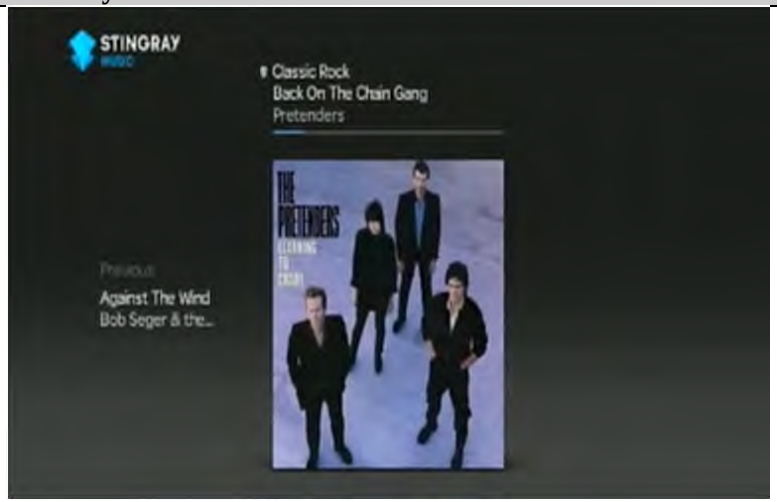
#	'045 Patent	Stingray Music System/Method
		
11c	transmitting simultaneously to a plurality of client systems audio data corresponding to the selected song, wherein each of the plurality of client systems is configured to use the audio data to play the song so that each user of each of the plurality of client systems can listen to the song, and the plurality of client systems includes a first client system and a second client system;	The Stingray Music Method transmits simultaneously to a plurality of client systems (*e.g.*, end-user devices running the Stingray Music app coupled to a television) audio data corresponding to the selected song (*e.g.*, the song "Back on the Chain Gang" or "Workin' for MCA"). *See, e.g.*, Stingray Website, "Support," available at http://music.stingray.com/en_US/about/support (last accessed Aug. 4, 2016) ("The Stingray Music website at Stingray Music.tv also has a listing of all songs played in the last 24 hours for each of the Stingray Music channels.") (MC-Stingray00119565). Each of the plurality of client systems is configured to use the audio data to play the song (*e.g.*, the song "Back on the Chain Gang" or "Workin' for MCA") so that each user of each of the plurality of client systems can listen to the song. *See id.* The plurality of client systems includes a first client system and a second client system (*e.g.*, first and second end-user devices running the Stingray Music app coupled to televisions).

Exhibit 4: Stingray's Infringement of the '045 Patent

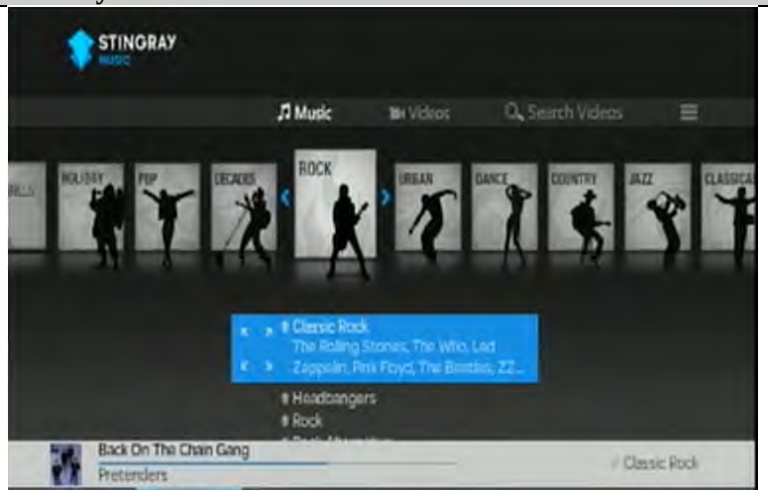
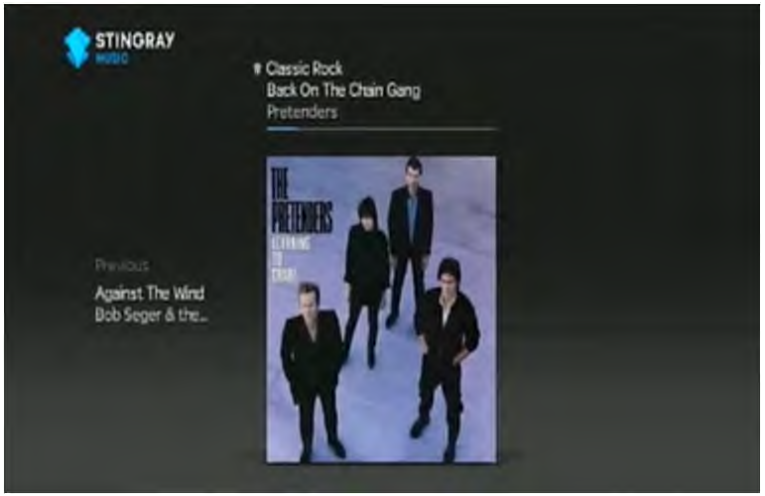
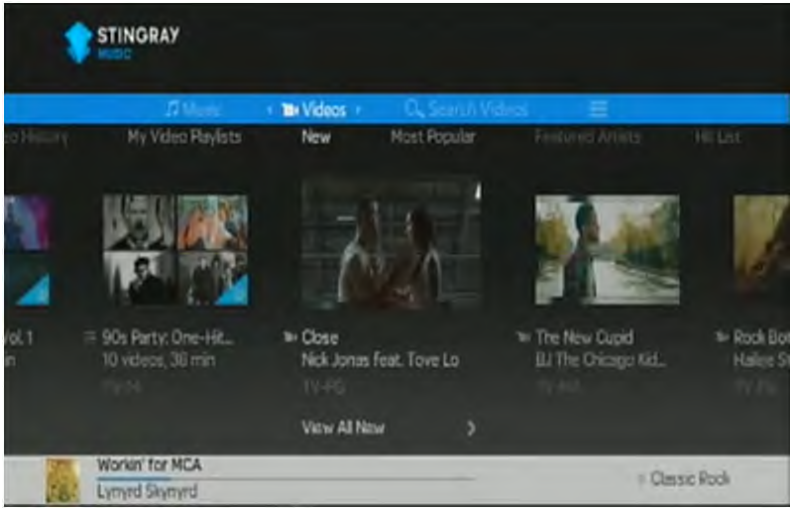
#	'045 Patent	Stingray Music System/Method
		 
11d	while transmitting the audio data to the plurality of client systems, transmitting to the first client system	The Stingray Music Method, while transmitting the audio data (*e.g.*, the audio data for the song "Workin' for MCA") to the plurality of client systems, transmits to the first client system a video identifier identifying a video (*e.g.*, a thumbnail identifying

Exhibit 4: Stingray's Infringement of the '045 Patent

#	'045 Patent	Stingray Music System/Method
	a video identifier identifying a video;	a music video for the song "Close"). 
11e	while the first client system is playing the song enabling the user of the first client system to indicate that the user desires to view the video identified by, the video identifier and then receiving from the first client system a message comprising information indicating that the user desires to view the video identified by the video identifier, wherein the message is received while at least a portion of the audio data is being transmitted to the first client system; and	The Stingray Music Method, while the first client system is playing the song (*e.g.*, the song "Workin' for MCA"), enables the user of the first client system to indicate that the user desires to view the video identified by the video identifier (*e.g.*, the music video for the song "Close"). The Stingray Music Method then receives from the first client system a message comprising information indicating that the user desires to view the video identified by the video identifier (*e.g.*, the music video for the song "Close"). The message is received while at least a portion of the audio data (*e.g.*, the audio data for the song "Workin' for MCA") is being transmitted to the first client system.

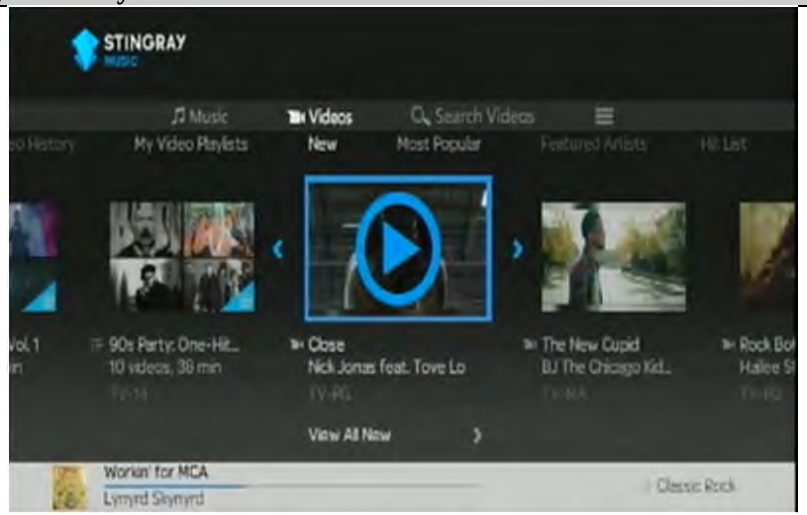
#	'045 Patent	Stingray Music System/Method
		
11f	in response to receiving the message from the first client system, transmitting to the first client system video data corresponding to the video identified by the video identifier.	The Stingray Music Method, in response to receiving the message from the first client system, transmits to the first client system video data corresponding to the video identified by the video identifier (*e.g.*, video data corresponding to the music video for the song "Close").

Exhibit 4: Stingray's Infringement of the '045 Patent

#	'045 Patent	Stingray Music System/Method
		
12a	The video-on-demand method of claim 11,	*See* claim 11, above.
12b	wherein the first client system comprises a set-top-box and a television connected to the set-top-box.	In the Stingray Music Method, the client system (*e.g.*, an end-user device running the Stingray Music app coupled to a television) comprises a set-top-box and a television connected to the set-top-box.

Exhibit 4: Stingray's Infringement of the '045 Patent

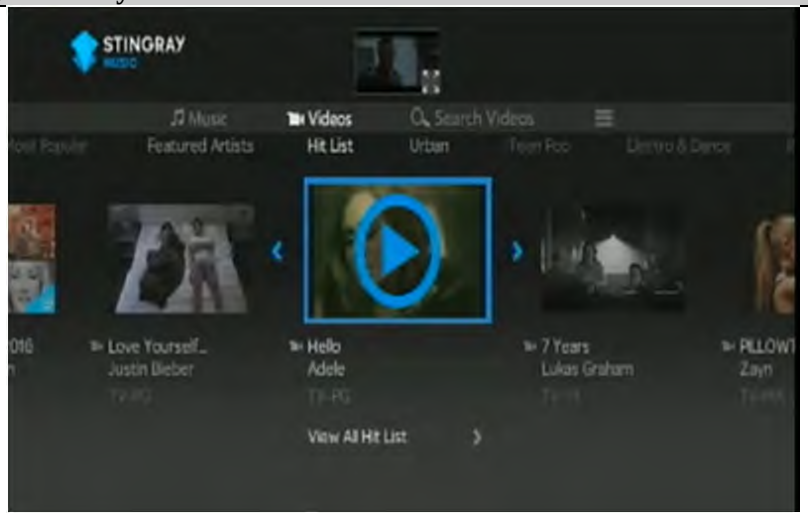
#	'045 Patent	Stingray Music System/Method
		
13a	The video-on-demand method of claim 11,	*See* claim 11, above.
13b	wherein the video is a music video.	In the Stingray Music Method, the video is a music video (*e.g.*, the music video for the song "Close").
14a	The video-on-demand method of claim 11, further comprising	*See* claim 11, above.
14b	creating a playlist, wherein the playlist comprises a set of media asset identifiers selected by a user of the second client system, each media asset identifier included in the set of media asset identifiers identifying a media asset.	The Stingray Music Method creates a playlist (*e.g.*, a playlist entitled "p1"). The playlist comprises a set of media asset identifiers (*e.g.*, song names identifying music videos for songs entitled "Close" and "The New Cupid") selected by a user of the second client system, each media asset identifier included in the set of media asset identifiers identifying a media asset (*e.g.*, song names identifying music videos for songs entitled "Close" and "The New Cupid").

Exhibit 4: Stingray's Infringement of the '045 Patent

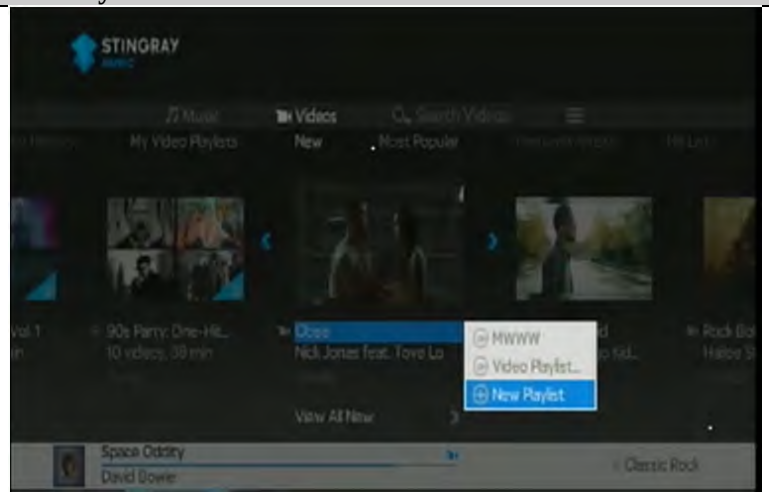
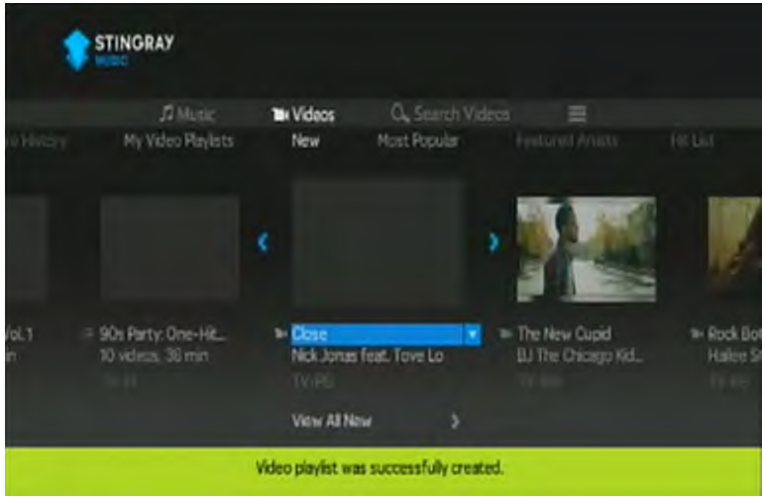
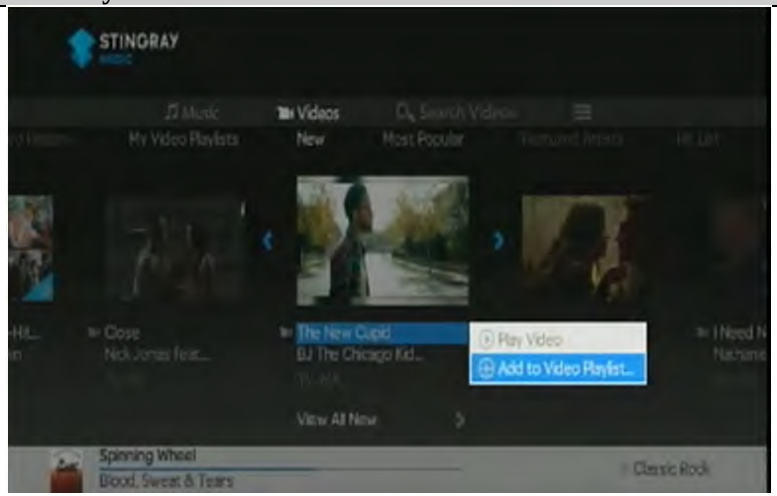
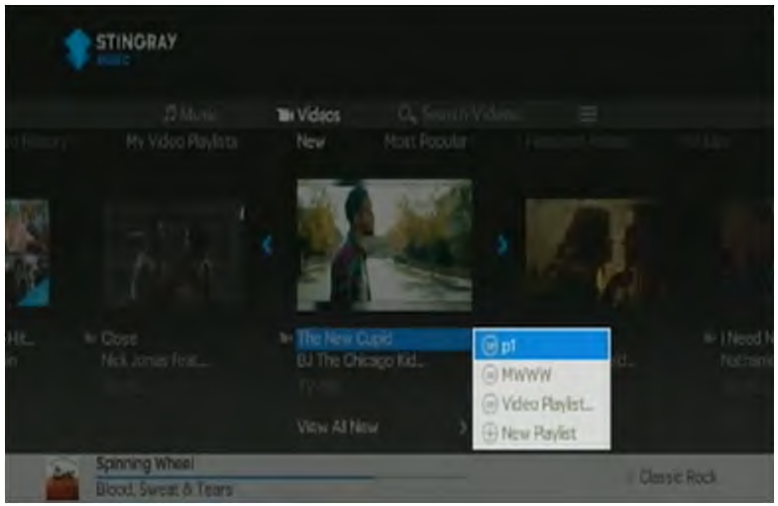
#	'045 Patent	Stingray Music System/Method
		 

Exhibit 4: Stingray's Infringement of the '045 Patent

#	'045 Patent	Stingray Music System/Method
		 

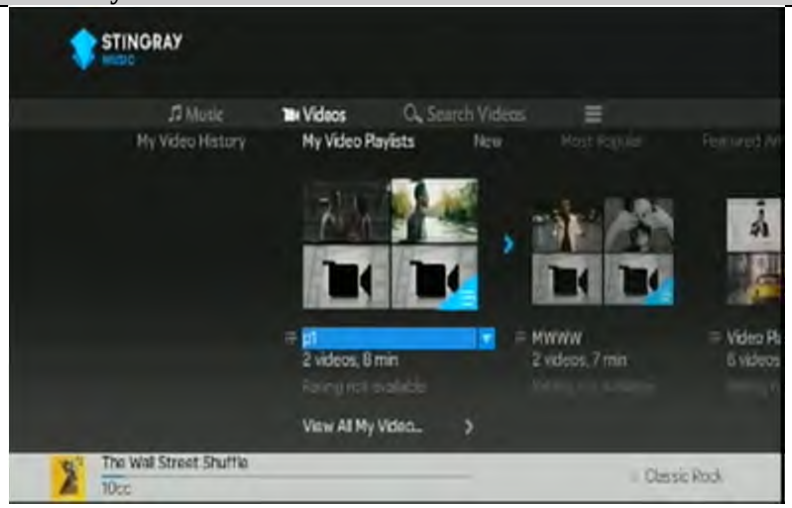
#	'045 Patent	Stingray Music System/Method
		
15a	The video-on-demand method of claim 14, further comprising:	*See* claim 14, above.
15b	receiving information transmitted by the second client system, the information indicating that the user of the second client system desires to view a media asset identified by a media asset identifier included in the playlist;	The Stingray Music Method receives information transmitted by the second client system, the information indicating that the user of the second client system desires to view a media asset identified by a media asset identifier included in the playlist (*e.g.*, the music video for the song entitled "Hello").

Exhibit 4: Stingray's Infringement of the '045 Patent

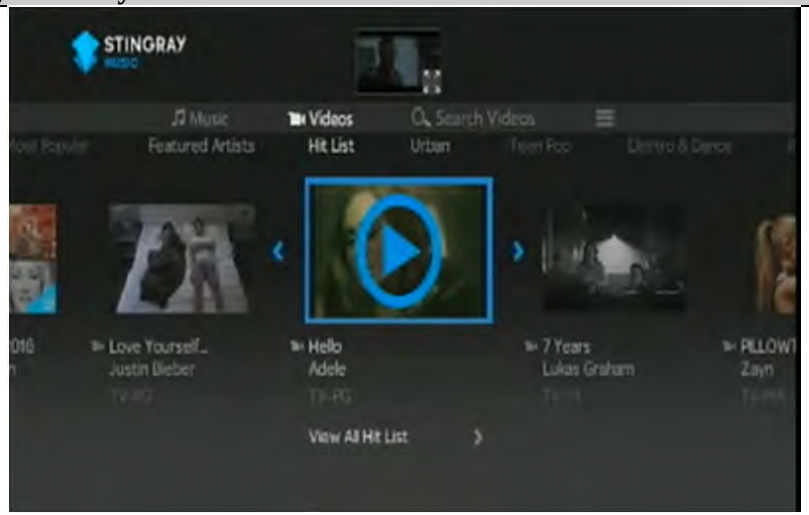
#	'045 Patent	Stingray Music System/Method
		
15c	in response to receiving the information, transmitting to the second client system the media asset desired by the user.	The Stingray Music Method, in response to receiving the message from the client system, transmits to the client system video data corresponding to the video identified by the video identifier (*e.g.*, video data corresponding to the music video for the song entitled "Hello").

Exhibit 4: Stingray's Infringement of the '045 Patent

#	'045 Patent	Stingray Music System/Method
		
16a	16. A video-on-demand system, the video on demand system comprising:	The Stingray Music System, which includes the Stingray Music TV app on AT&T's U-verse® platform, is a video-on-demand system. *See, e.g.*, Stingray Music Website "Music Videos on Demand Service," available at http://music.stingray.com/en_US/about/MVOD (last accessed Aug. 6, 2016) ("[t]he Stingray Music service offering now includes Music Videos on Demand") (MC-Stingray00119564).

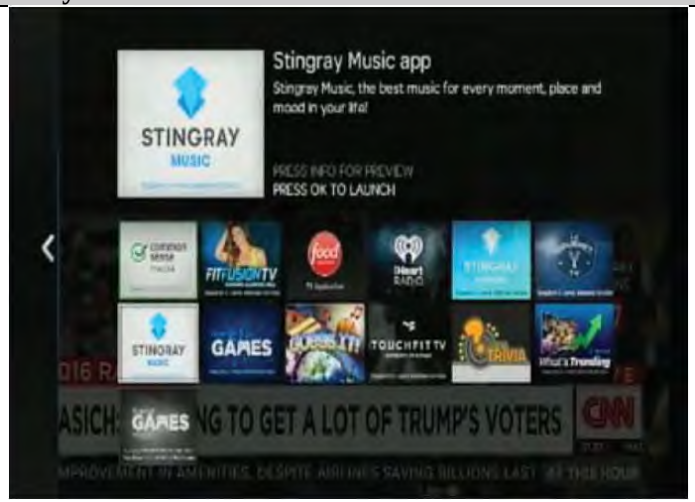
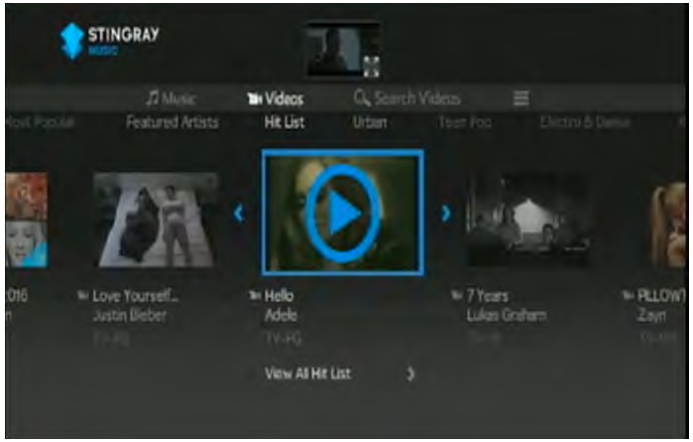
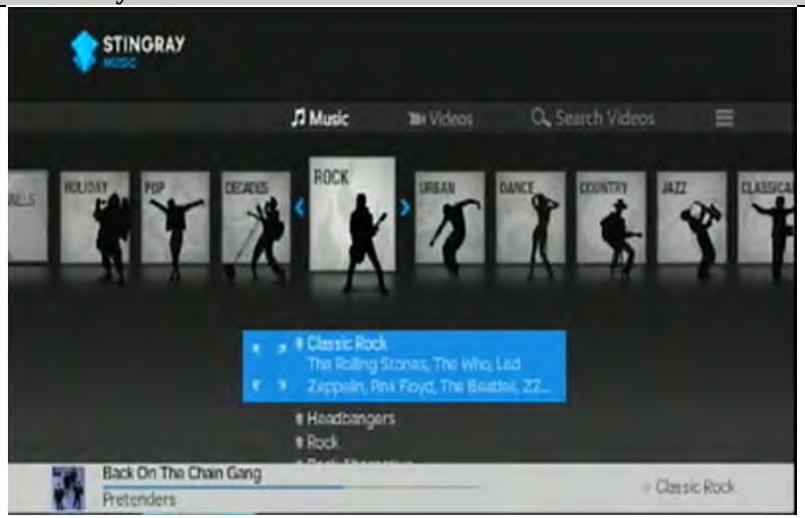
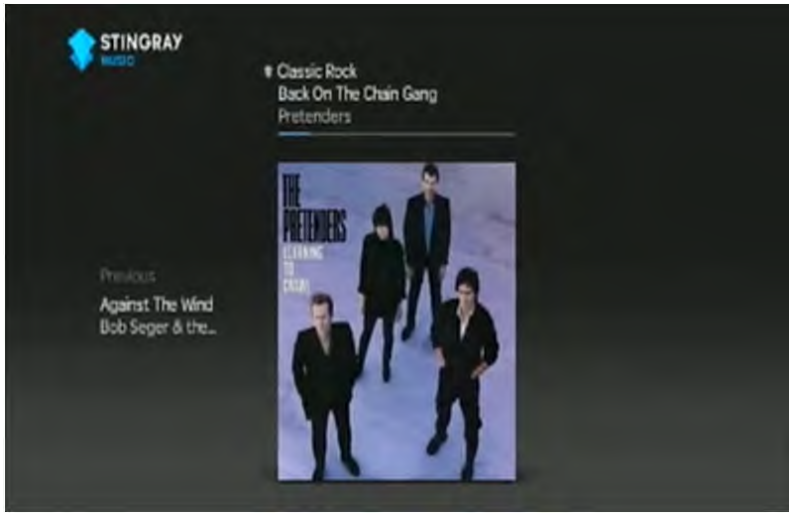
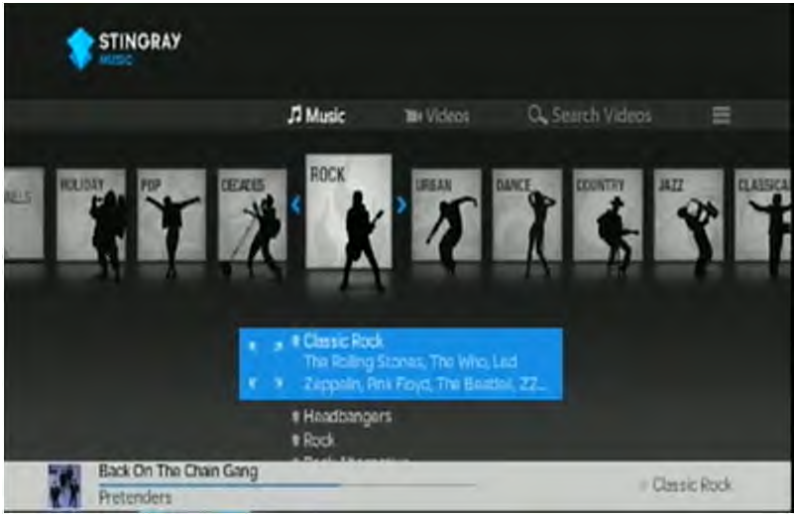
#	'045 Patent	Stingray Music System/Method
		 
16b	a transmitter;	The Stingray Music System comprises a transmitter.
16c	a receiver; and	The Stingray Music System comprises a receiver.

Exhibit 4: Stingray's Infringement of the '045 Patent

#	'045 Patent	Stingray Music System/Method
16d	a computer system coupled to the transmitter and the receiver, wherein the computer system is configured to perform a method comprising:	The Stingray Music System comprises a computer system coupled to the transmitter and the receiver, and the computer system is configured to perform a method.
16e	selecting a song for one of a plurality of music channels, the one of the plurality of music channels being associated with a genre of music;	The computer system of the Stingray Music System selects a song (*e.g.*, the song "Back on the Chain Gang" or "Workin' for MCA") for one of a plurality of music channels (*e.g.*, the "Classic Rock" channel). *See, e.g.*, "Stingray Music Brings All Good Vibes to AT&T U-verse Customers," Oct. 29, 2014, available at about.att.com/story/stingray_music_app_on_uverse_tv.html (last accessed Aug. 4, 2016) ("the new Stingray Music app, available at no additional charge, will have more than 100 streaming music channels") (MC-Stingray00119568); Stingray Website, "Continuous Music Service," available at http://music.stingray.com/en_US/about/baseService (last accessed Aug. 4, 2016) ("The Stingray Music continuous music network provides its listeners with a selection of close to fifty music channels, all commercial-free and uninterrupted, that cover a large variety of music genres, from rock to pop to jazz, to classical or international, delivered in pristine quality digital audio.") (MC-Stingray00119561). The one of the plurality of music channels (*e.g.*, the "Classic Rock" channel) is associated with a genre of music (*e.g.*, the classic rock genre).

Exhibit 4: Stingray's Infringement of the '045 Patent

#	'045 Patent	Stingray Music System/Method
		 
16f	transmitting simultaneously to a	The computer system of the Stingray Music System transmits simultaneously to a

#	'045 Patent	Stingray Music System/Method
	plurality of client systems audio data corresponding to the selected song, wherein each of the plurality of client systems is configured to use the audio data to play the song so that each user of each of the plurality of client systems can listen to the song, and the plurality of client systems includes a first client system and a second client system;	plurality of client systems (*e.g.*, end-user devices running the Stingray Music app coupled to a television) audio data corresponding to the selected song (*e.g.*, the song "Back on the Chain Gang" or "Workin' for MCA"). *See, e.g.*, Stingray Website, "Support," available at http://music.stingray.com/en_US/about/support (last accessed Aug. 4, 2016) ("The Stingray Music website at Stingray Music.tv also has a listing of all songs played in the last 24 hours for each of the Stingray Music channels.") (MC-Stingray00119565). Each of the plurality of client systems is configured to use the audio data to play the song (*e.g.*, the song "Back on the Chain Gang" or "Workin' for MCA") so that each user of each of the plurality of client systems can listen to the song. *See id.* The plurality of client systems includes a first client system and a second client system (*e.g.*, first and second end-user devices running the Stingray Music app and coupled to a television). 

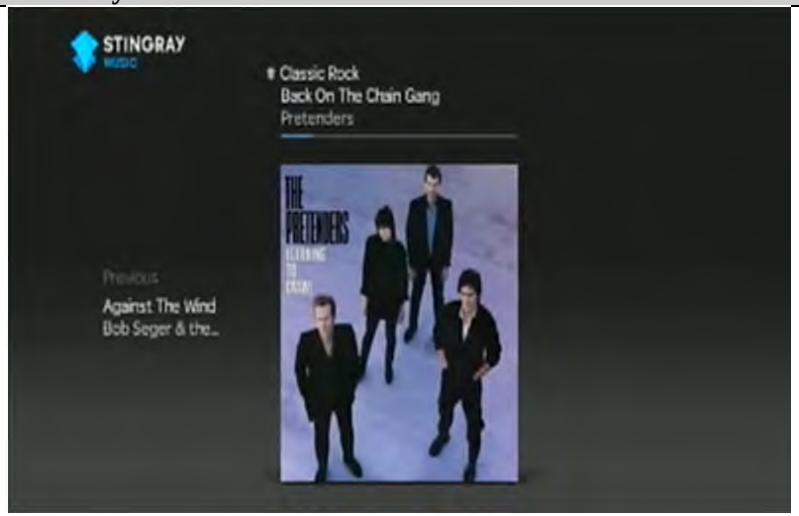
#	'045 Patent	Stingray Music System/Method
		
16g	while transmitting the audio data to the plurality of client systems, transmitting to the first client system a video identifier identifying a video;	The computer system of the Stingray Music System, while transmitting the audio data (*e.g.*, the audio data for the song "Workin' for MCA") to the plurality of client systems, transmits to the first client system (*e.g.*, the first device running the Stingray Music app) a video identifier identifying a video (*e.g.*, a thumbnail identifying a music video for the song "Close").

Exhibit 4: Stingray's Infringement of the '045 Patent

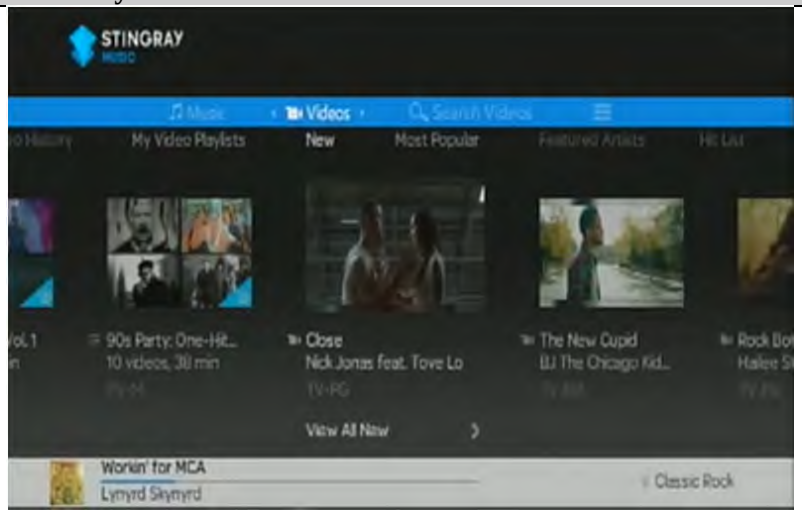
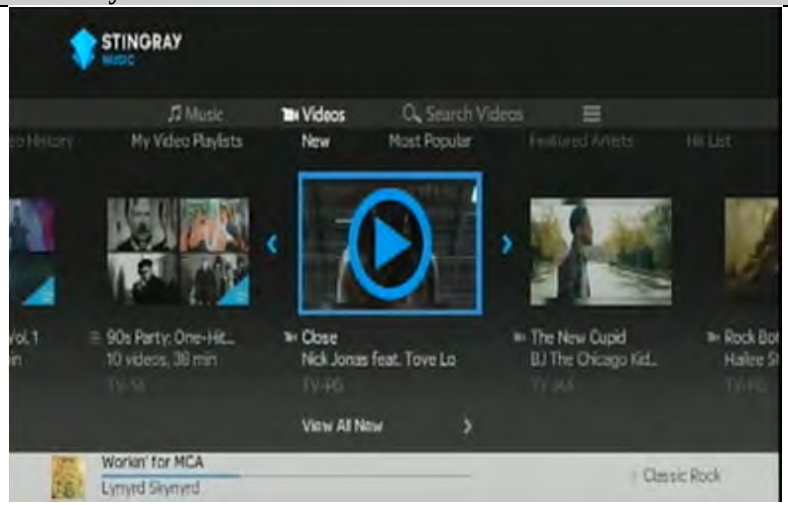
#	'045 Patent	Stingray Music System/Method
		
16h	while the first client system is playing the song enabling the user of the first client system to indicate that the user desires to view the video identified by the video identifier, and then in response to receiving from the first client system a message comprising information indicating that the user desires to view the video identified by the video identifier, transmitting to the first client system video data corresponding to the video identified by the video identifier.	The computer system of the Stingray Music System, while the first client system is playing the song (*e.g.*, the song "Workin' for MCA") enables the user of the first client system to indicate that the user desires to view the video identified by the video identifier (*e.g.*, the music video for the song "Close"). The computer system of the Stingray Music System then, in response to receiving from the first client system a message comprising information indicating that the user desires to view the video identified by the video identifier (*e.g.*, the music video for the song "Close"), transmits to the first client system video data corresponding to the video identified by the video identifier (*e.g.*, video data corresponding to the music video for the song "Close").

Exhibit 4: Stingray's Infringement of the '045 Patent

#	'045 Patent	Stingray Music System/Method
		 
17a	17. The video-on-demand system of claim 16	*See* claim 16, above.

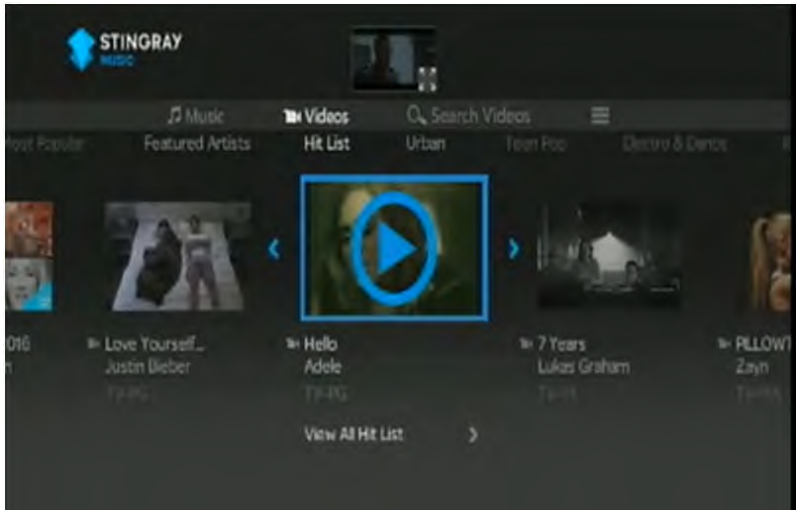
#	'045 Patent	Stingray Music System/Method
17b	wherein the first client system comprises a set-top-box and a television connected to the set-top-box.	In the Stingray Music System, the client system (*e.g.*, the end-user device running the Stingray Music app coupled to a television) comprises a set-top-box and a television connected to the set-top-box. 
18a	18. The video-on-demand system of claim 16,	*See* claim 16, above.
18b	wherein the video is a music video.	In the Stingray Music System, the video is a music video (*e.g.*, the music video for the song "Close").
19a	19. The video-on-demand system of claim 16,	*See* claim 16, above.
19b	wherein the method further comprises creating a playlist, wherein the playlist comprises a set of media asset identifiers selected by a user of the second client system,	The Stingray Music System creates a playlist (*e.g.*, a playlist entitled "p1"). The playlist comprises a set of media asset identifiers (*e.g.*, song names identifying music videos for songs entitled "Close" and "The New Cupid") selected by a user of the second client system, each media asset identifier included in the set of media asset identifiers identifying a media asset (*e.g.*, song names identifying music videos

Exhibit 4: Stingray's Infringement of the '045 Patent

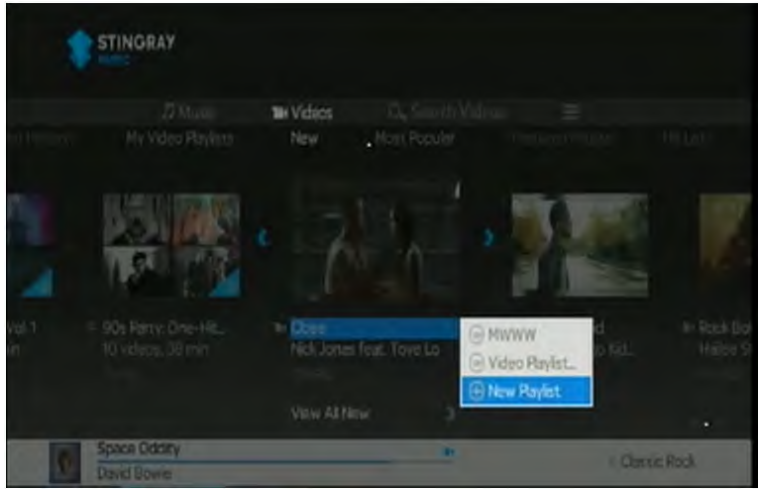
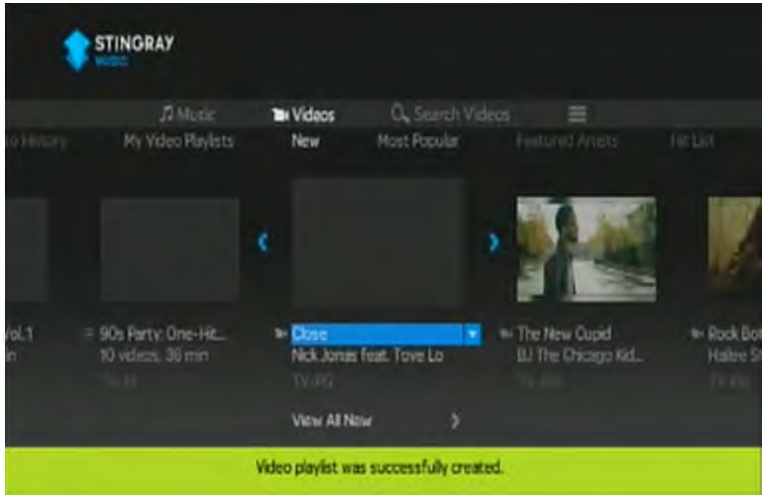
#	'045 Patent	Stingray Music System/Method
	each media asset identifier included in the set of media asset identifiers identifying a media asset.	for songs entitled "Close" and "The New Cupid").  

Exhibit 4: Stingray's Infringement of the '045 Patent

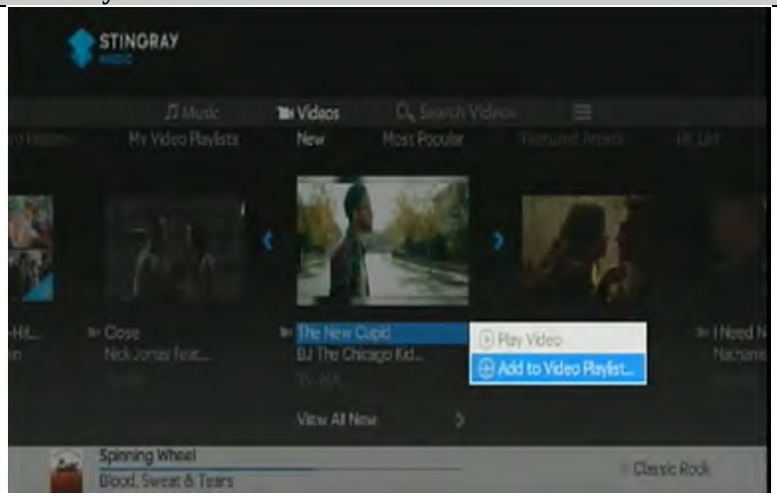
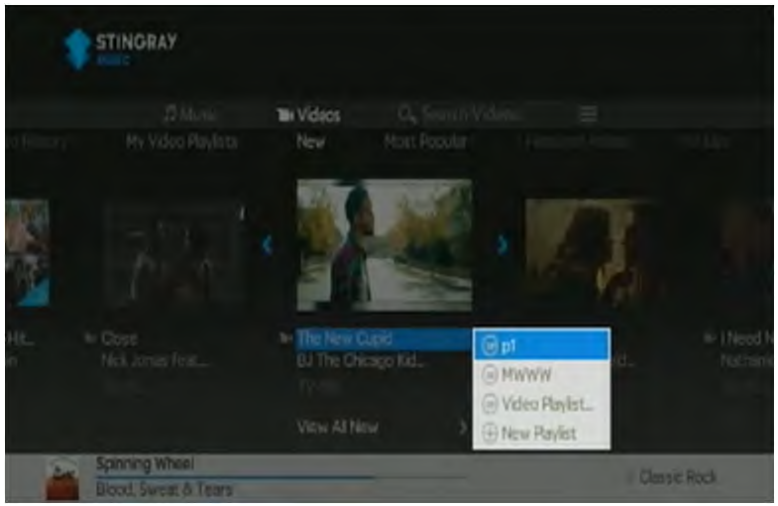
#	'045 Patent	Stingray Music System/Method
		 

Exhibit 4: Stingray's Infringement of the '045 Patent

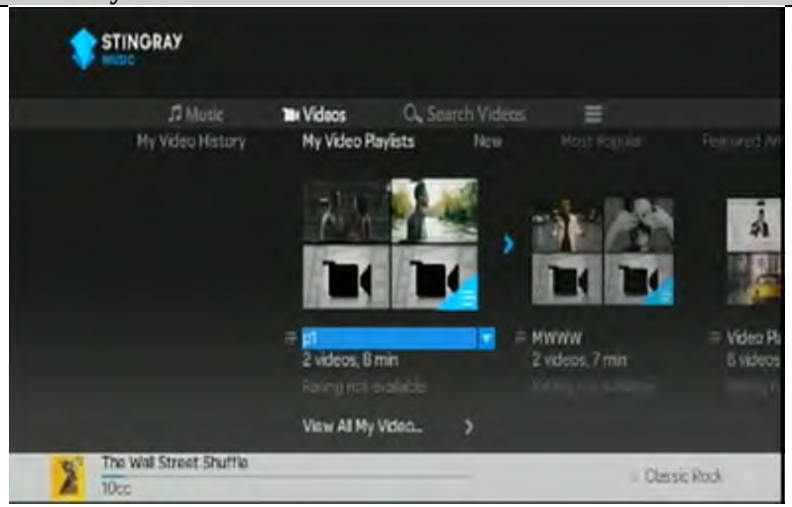
#	'045 Patent	Stingray Music System/Method
		
20a	20. The video-on-demand system of claim 19,	*See* claim 19, above.
20b	wherein the method further comprises, in response to receiving from the second client system information indicating that a user of the second client system desires to view a media asset identified by a media asset identifier included in the playlist, transmitting to the second client system the media asset desired by the user.	In response to receiving from the second client system information indicating that a user of the second client system desires to view a media asset identified by a media asset identifier included in the playlist (*e.g.*, an indication to view the music video for the song entitled "Close"), the Stingray Music System transmits to the second client system the media asset desired by the user (*e.g.*, the music video for the song entitled "Close").

Exhibit 4: Stingray's Infringement of the '045 Patent

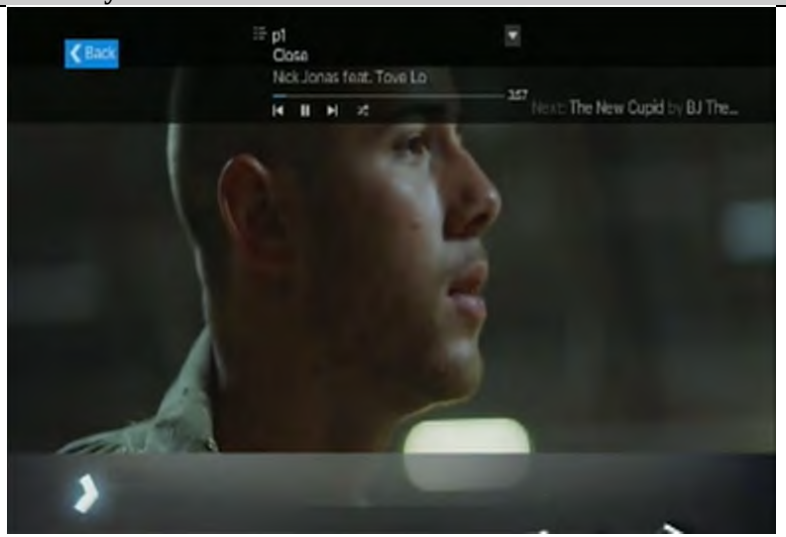
#	'045 Patent	Stingray Music System/Method
		

EXHIBIT 5

Stingray's Infringement of the '121 Patent

UNITED STATES PATENT NO. 9,414,121 ("the '121 Patent")

This portion of Plaintiff's infringement contentions refers to the Stingray Music TV app that is offered on the AT&T's U-verse® platform as exemplary. These contentions apply to all similar Stingray Music products and services as offered on other platforms[1] (collectively the "Stingray Music System/Method").

#	'121 Patent	Stingray Music System/Method
1a	A system for providing an on-demand, personalized media service and a broadcast service to a set-top-box, comprising:	The Stingray Music System, which includes the Stingray Music TV app on AT&T's U-verse® platform, is a system for providing an on-demand, personalized media service and a broadcast service to a set-top-box. *See, e.g.*, Stingray Music Website "Music Videos on Demand Service," available at http://music.stingray.com/en_US/about/MVOD (last accessed August 5, 2016) ("[t]he Stingray Music service offering now includes Music Videos on Demand") (MC-Stingray00119564); Stingray Music Website "Distribute Stingray Music," available at http://music.stingray.com/en_US/about/distribute (last accessed August 4, 2016) ("All of the Stingray Music services are delivered using Stingray's proprietary UbiquiCAST broadcast infrastructure. This advanced, next-generation server technology allows for customization of services for specific customers.") (MC-Stingray00119562).

[1] These platforms include, for example, cable operator, satellite, Internet Protocol television (IPTV), mobile, and/or website platforms.

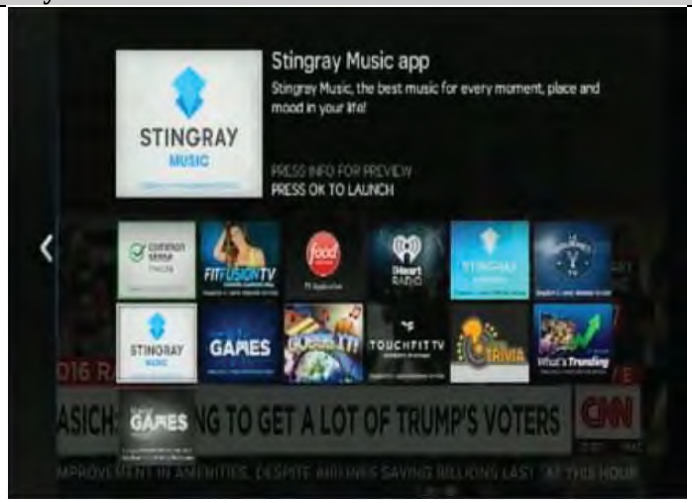
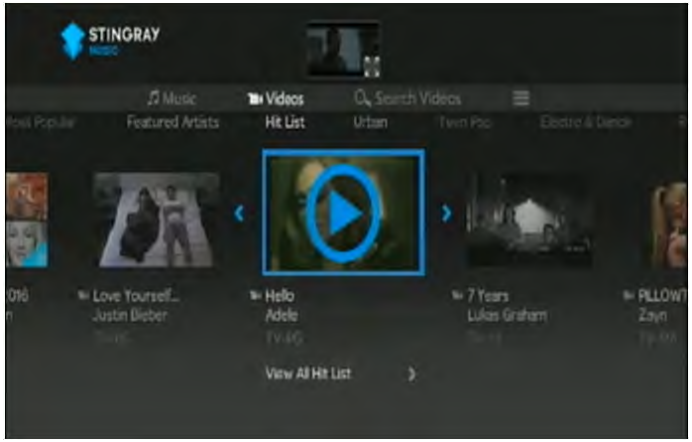
#	'121 Patent	Stingray Music System/Method
		 
1b	a distribution network, wherein the set-top-box is connected to the distribution network; and	The Stingray Music System includes/uses a distribution network (*e.g.*, AT&T's U-verse® distribution network). The set-top-box is connected to the distribution network.

Exhibit 5: Stingray's Infringement of the '121 Patent

#	'121 Patent	Stingray Music System/Method
1c	a distribution system including a transmission system operable to transmit via the distribution network a media channel comprising a stream of audio and video data, wherein	The Stingray Music System transmits a plurality of media channels. *See, e.g.*, AT&T Newsroom "Stingray Music Brings All Good Vibes to AT&T U-verse Customers" (Oct. 29, 2014), available at about.att.com/story/stingray_music_app_on_uverse_tv.html (last accessed August 4, 2016) ("the new Stingray Music app, available at no additional charge, will have more than 100 streaming music channels") (MC-Stingray00119568); Stingray Music website "Continuous music service," available at http://music.stingray.com/en_US/about/baseService (last accessed August 4, 2016) ("The Stingray Music continuous music network provides its listeners with a selection of close to fifty music channels, all commercial-free and uninterrupted, that cover a large variety of music genres, from rock to pop to jazz, to classical or international, delivered in pristine quality digital audio.") (MC-Stingray00119561). The Stingray Music System includes/uses a distribution system including a transmission system operable to transmit via the distribution network (*e.g.*, AT&T's U-verse® distribution network) a media channel (*e.g.*, a "Classic Rock" media channel) comprising a stream of audio and video data (*e.g.*, audio data for the song "Back on the Chain Gang" or "Workin' for MCA" and video data including song title, artist name, and album art data).

Exhibit 5: Stingray's Infringement of the '121 Patent

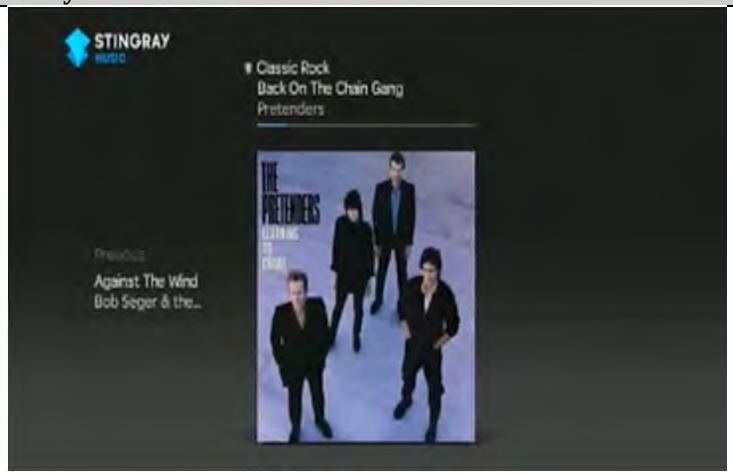
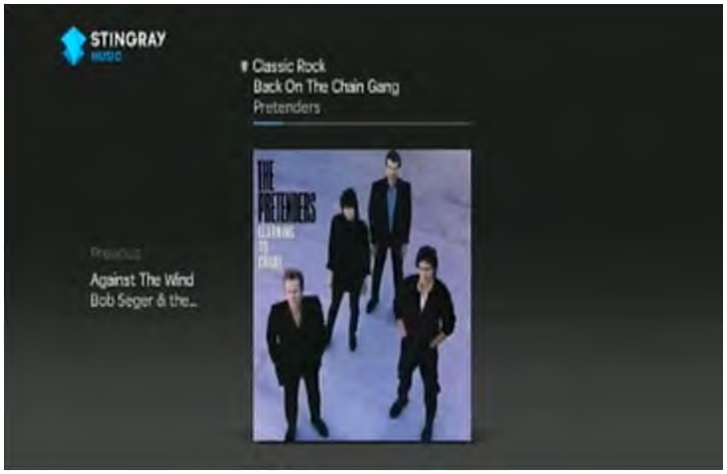
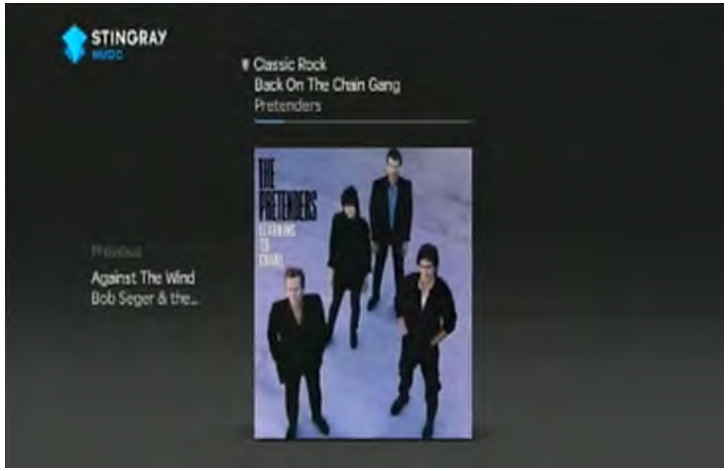
#	'121 Patent	Stingray Music System/Method
		
1d	the set-top-box is operable to: (1) receive the media channel via the distribution network,	In the Stingray Music System, the set-top-box is operable to receive the media channel (*e.g.*, a "Classic Rock" media channel) via the distribution network. 

Exhibit 5: Stingray's Infringement of the '121 Patent

#	'121 Patent	Stingray Music System/Method
1e	(2) reproduce the stream of audio data included in the received media channel for a user of the client system to hear,	In the Stingray Music system, the set-top-box is operable to reproduce the stream of audio data (*e.g.*, audio data for the song "Back on the Chain Gang" or "Workin' for MCA") included in the received media channel (*e.g.*, the "Classic Rock" media channel) for a user of the client system (*e.g.*, the device running the Stingray Music app) to hear. 
1f	(3) display video corresponding to the stream of video data included in the received media channel on a display device for the user to see,	In the Stingray Music System, the set-top-box is operable to display video corresponding to the stream of video data (*e.g.*, video corresponding to the song title, artist name, and album art data for the song "Back on the Chain Gang" or "Workin' for MCA") included in the received media channel (*e.g.*, the "Classic Rock" media channel) on a display device for the user to see.

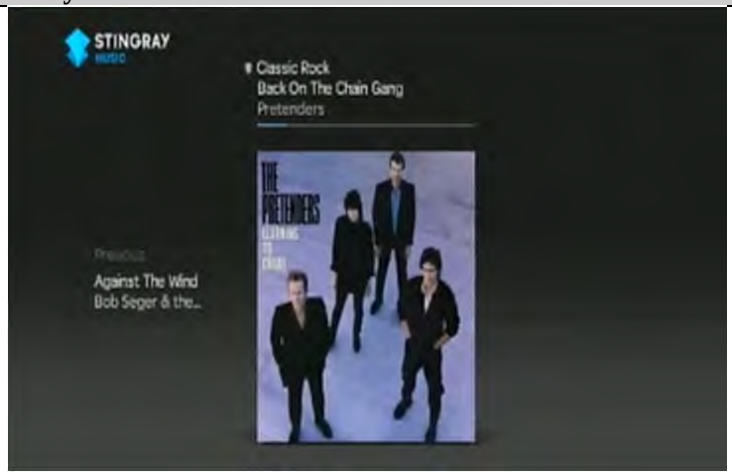
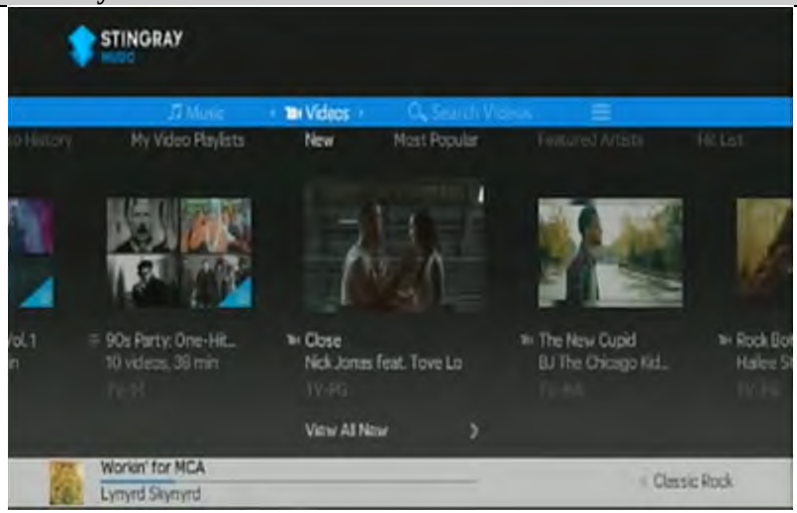
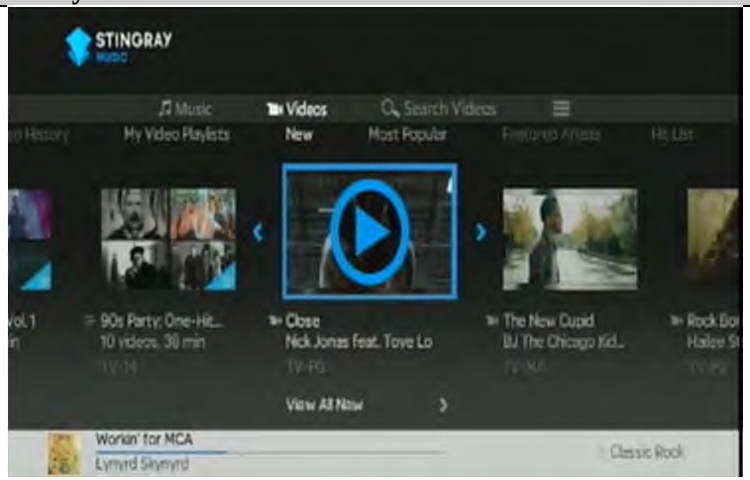
#	'121 Patent	Stingray Music System/Method
		
1g	(4) receive via the distribution network video identifier information comprising an identifier for identifying an available on-demand video while displaying on the display device the video corresponding to the stream of video data included in the received media channel,	In the Stingray Music System, the set-top-box is operable to receive via the distribution network video identifier information comprising an identifier (*e.g.*, a thumbnail or title identifying a music video for the song entitled "Close") for identifying an available on-demand video (*e.g.*, the music video for the song entitled "Close") while displaying on the display device the video corresponding to the stream of video data (*e.g.*, the video corresponding to the song title, artist name, and album art data) included in the received media channel (*e.g.*, the "Classic Rock" media channel).

Exhibit 5: Stingray's Infringement of the '121 Patent

#	'121 Patent	Stingray Music System/Method
		
1h	(5) display a user selectable element for requesting the available on-demand video on the display device so that the user selectable element is displayed on the display device together with at least a portion of the video corresponding to the stream of video data as a result of receiving the video identifier information transmitted to the set-top-box using the distribution network, the user selectable element being associated with the available on-demand video, and	In the Stingray Music System, the set-top-box is operable to display a user selectable element (*e.g.*, a thumbnail image for the music video for the song entitled "Close") for requesting the available on-demand video (*e.g.*, the music video for the song entitled "Close") on the display device so that the user selectable element is displayed on the display device together with at least a portion of the video corresponding to the stream of video data (*e.g.*, video corresponding to the song title, artist name, and album art data for the song "Back on the Chain Gang" or "Workin' for MCA") as a result of receiving the video identifier information (*e.g.*, the thumbnail or title identifying a music video for the song entitled "Close") transmitted to the set-top-box using the distribution network. The user selectable element (*e.g.*, the thumbnail image for the music video for the song entitled "Close") is associated with the available on-demand video (*e.g.*, the music video for the song entitled "Close").

#	'121 Patent	Stingray Music System/Method
		
1i	(6) in response to the user of the set-top-box selecting the user selectable element, causing an on-demand video system to transmit to the set-top-box the available on-demand video by transmitting to the on-demand video system an on-demand request message.	In the Stingray Music System, the set-top-box is operable to, in response to the user of the set-top-box selecting the user selectable element (*e.g.*, the thumbnail or title identifying the music video for the song entitled "Close"), causing an on-demand video system (*e.g.*, the UbiquiCAST on-demand video system operated by Stingray alone or in conjunction with AT&T U-verse®) to transmit to the set-top-box the available on-demand video (*e.g.*, the music video for the song entitled "Close") by transmitting to the on-demand video system an on-demand request message (*e.g.*, a message indicating that the thumbnail or title identifying the music video for the song entitled "Close" was selected).

#	'121 Patent	Stingray Music System/Method
		
2a	The system of claim 1,	*See* claim 1, above.
2b	wherein the on-demand request message includes information identifying the on-demand video.	In the Stingray Music System, the on-demand request message includes information identifying the on-demand video (*e.g.*, identifying the music video for the song entitled "Close").

Exhibit 5: Stingray's Infringement of the '121 Patent

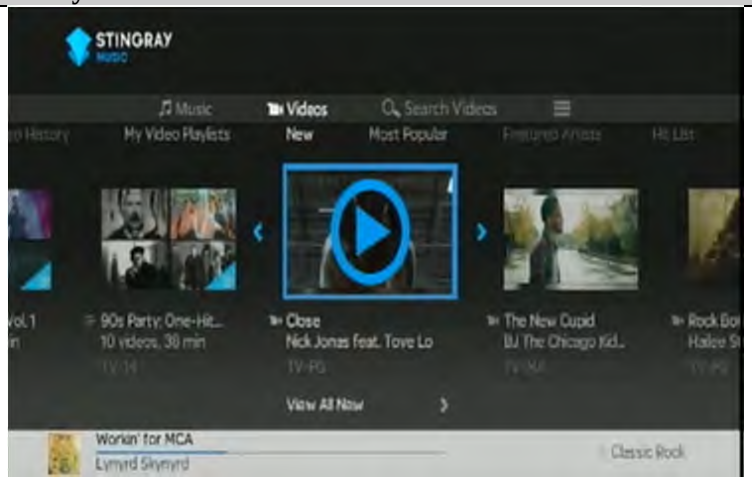
#	'121 Patent	Stingray Music System/Method
		
3a	The system of claim 1,	*See* claim 1, above.
3b	wherein the audio data is associated with an artist and music format, and the meta information comprises information for identifying the artist and/or music format.	In the Stingray Music System, the audio data is associated with an artist and music format (*e.g.*, "Pretenders," "Classic Rock"), and the meta information comprises information for identifying the artist and/or music format (*e.g.*, information identifying the artist "Pretenders," and/or music format "Classic Rock").

Exhibit 5: Stingray's Infringement of the '121 Patent

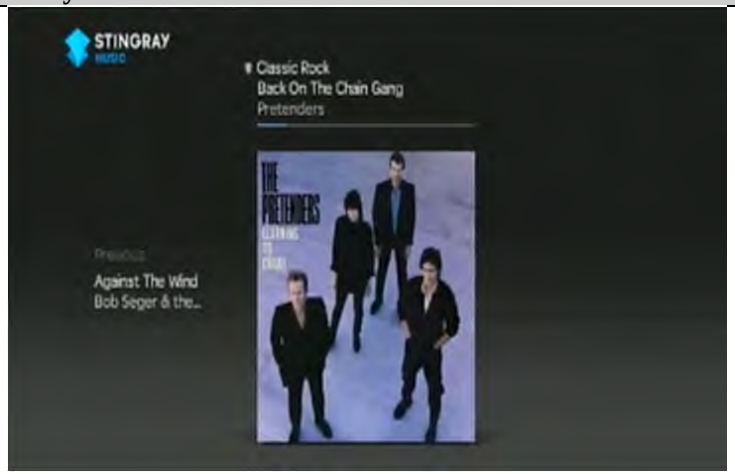
#	'121 Patent	Stingray Music System/Method
		
4a	The system of claim 1,	*See* claim 1, above.
4b	wherein the user selectable element is a distinct button.	In the Stingray Music System, the user selectable element is a distinct button (*e.g.*, a play button)

Exhibit 5: Stingray's Infringement of the '121 Patent

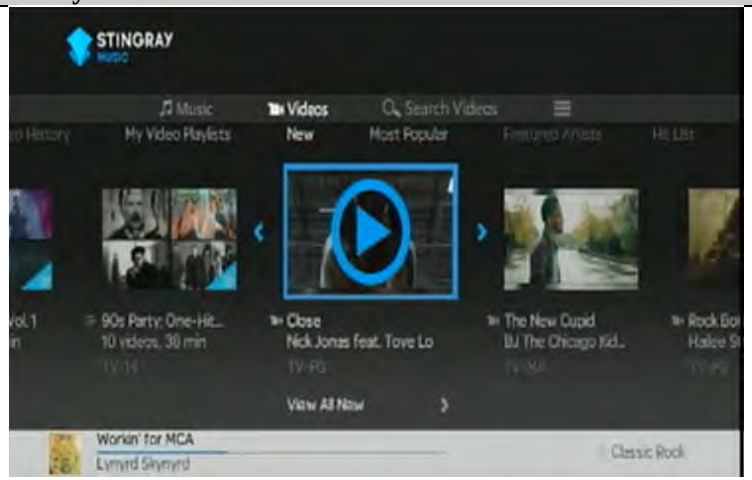
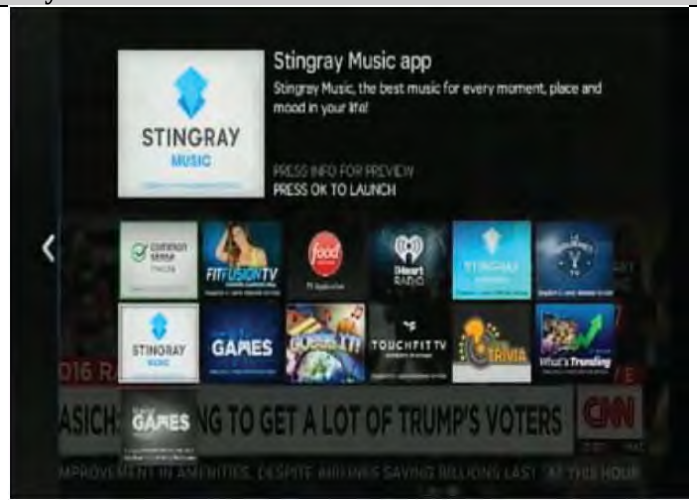
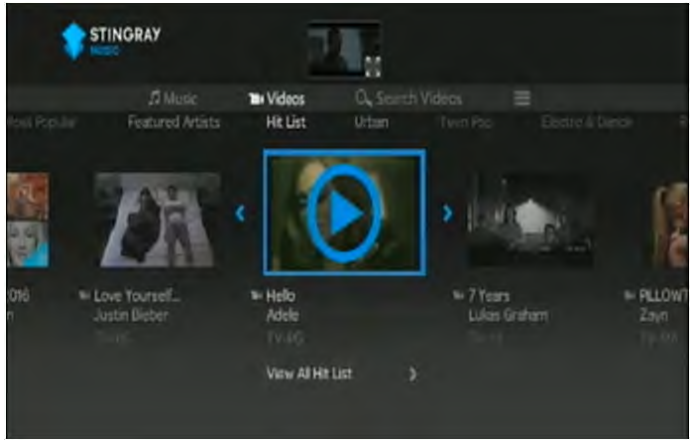
#	'121 Patent	Stingray Music System/Method
		
6a	A method for providing an on-demand service to a user of a set-top-box, comprising:	The Stingray Music Method, which includes the Stingray Music TV app on AT&T's U-verse® platform, is a method for providing an on-demand service to a user of a set-top-box. *See, e.g.*, Stingray Music Website "Music Videos on Demand Service," available at http://music.stingray.com/en_US/about/MVOD (last accessed August 5, 2016) ("[t]he Stingray Music service offering now includes Music Videos on Demand") (MC-Stingray00119564).

Exhibit 5: Stingray's Infringement of the '121 Patent

#	'121 Patent	Stingray Music System/Method
		 
6b	receiving at the set-top-box via a cable connected to a network a media channel comprising a stream of audio and video	The Stingray Music Method receives at the set-top-box via a cable connected to a network (*e.g.*, AT&T's U-verse® distribution network) a media channel (*e.g.*, the "Classic Rock" media channel) comprising a stream of audio and video data (*e.g.*, audio data for the song "Back on the Chain Gang" or "Workin' for MCA" and video

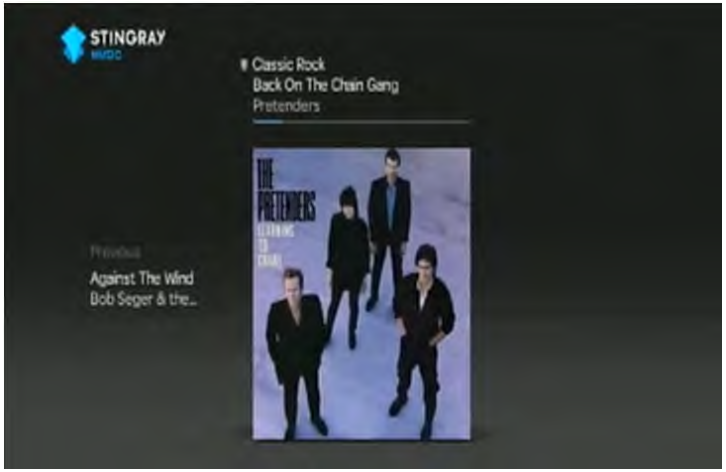
#	'121 Patent	Stingray Music System/Method
	data;	data including song title, artist name, and album art data). *See, e.g.*, AT&T Newsroom "Stingray Music Brings All Good Vibes to AT&T U-verse Customers" (Oct. 29, 2014), available at about.att.com/story/stingray_music_app_on_uverse_tv.html (last accessed August 4, 2016) ("the new Stingray Music app, available at no additional charge, will have more than 100 streaming music channels") (MC-Stingray00119568); Stingray Music website "Continuous music service," available at http://music.stingray.com/en_US/about/baseService (last accessed August 4, 2016) ("The Stingray Music continuous music network provides its listeners with a selection of close to fifty music channels, all commercial-free and uninterrupted, that cover a large variety of music genres, from rock to pop to jazz, to classical or international, delivered in pristine quality digital audio.") (MC-Stingray00119561). 
6c	the set-top-box displaying on a display device video corresponding to the video data stream;	In the Stingray Music Method, the set-top-box displays on a display device video corresponding to the video data stream (*e.g.*, video corresponding to the song title, artist name, and album art data for the song "Back on the Chain Gang" or "Workin' for MCA").

Exhibit 5: Stingray's Infringement of the '121 Patent

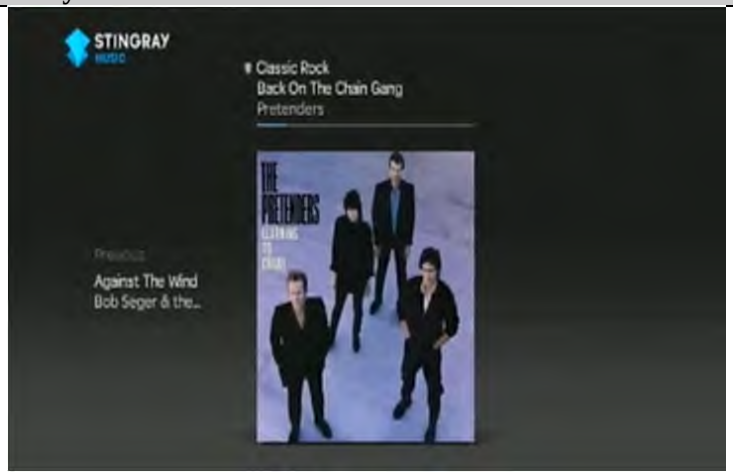
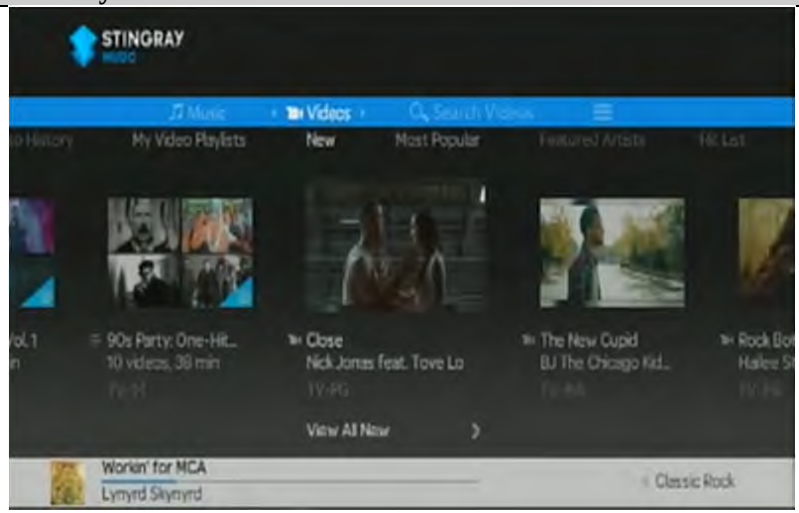
#	'121 Patent	Stingray Music System/Method
		
6d	while displaying said video, the set-top-box receiving video identifier information transmitted via the cable connected to the network, said video identifier information comprising an identifier for identifying an available on-demand video;	In the Stingray Music Method, while displaying said video (*e.g.*, the video corresponding to the song title, artist name, and album art data for the song "Back on the Chain Gang" or "Workin' for MCA"), the set-top-box receives video identifier information (*e.g.*, a thumbnail or title identifying a music video for the song entitled "Close") transmitted via the cable connected to the network. The video identifier information comprises an identifier for identifying an available on-demand video (*e.g.*, the music video for the song entitled "Close").

Exhibit 5: Stingray's Infringement of the '121 Patent

#	'121 Patent	Stingray Music System/Method
		
6e	the set top box displaying on the display device, as a result of receiving said video identifier information, a user selectable element for requesting the available on-demand video while also displaying video corresponding to the video data stream so that the user can see the user selectable element while also seeing the displayed video corresponding to the video data stream, the user selectable element being associated with the available on-demand video;	In the Stingray Music Method, the set top box displays on the display device, as a result of receiving said video identifier information (*e.g.*, the thumbnail or title identifying the music video for the song entitled "Close"), a user selectable element (*e.g.*, a thumbnail image for the music video for the song entitled "Close") for requesting the available on-demand video (*e.g.*, the music video for the song entitled "Close") while also displaying video corresponding to the video data stream (*e.g.*, the video corresponding to the song title, artist name, and album art data for the song "Back on the Chain Gang" or "Workin' for MCA") so that the user can see the user selectable element (*e.g.*, the thumbnail image for the music video for the song entitled "Close") while also seeing the displayed video corresponding to the video data stream (*e.g.*, the video corresponding to the song title, artist name, and album art data for the song "Back on the Chain Gang" or "Workin' for MCA"). The user selectable element (*e.g.*, the thumbnail image for the music video for the song entitled "Close") is associated with the available on-demand video (*e.g.*, the music video for the song entitled "Close").

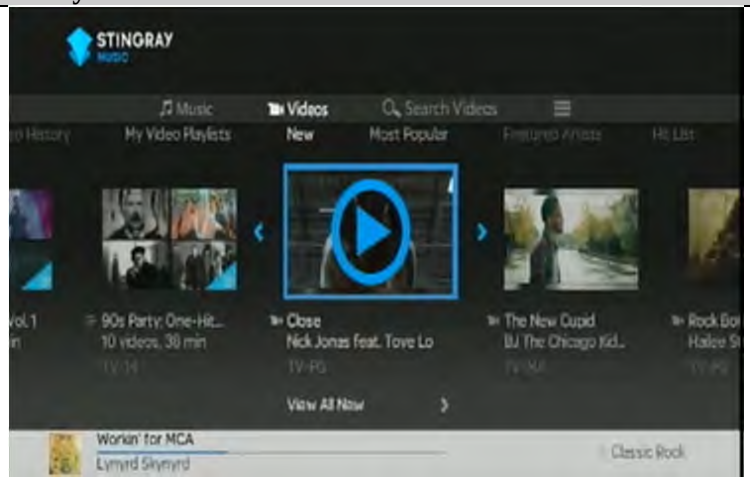
#	'121 Patent	Stingray Music System/Method
		
6f	the set-top-box detecting that the user has selected the selectable element for requesting the available on-demand video; and	In the Stingray Music Method, the set-top-box detects that the user has selected the selectable element (*e.g.*, the thumbnail image for the music video for the song entitled "Close") for requesting the available on-demand video (*e.g.*, the music video for the song entitled "Close").
6g	in response detecting that the user has selected the selectable element, the set-top-box causing an on-demand video system to transmit to the set-top-box the available on-demand video, wherein causing the on-demand video system to transmit to the set-top-box the available on-demand video comprises the set-top-box transmitting to the on-demand video system an on-demand request message configured to cause the on-demand video system to transmit to the set-top-box the available on-demand video.	In the Stingray Music Method, in response detecting that the user has selected the selectable element (*e.g.*, the thumbnail or title identifying the music video for the song entitled "Close"), the set-top-box causing an on-demand video system (*e.g.*, the UbiquiCAST on-demand video system operated by Stingray alone or in conjunction with AT&T U-verse®) to transmit to the set-top-box the available on-demand video (*e.g.*, the music video for the song entitled "Close"). Causing the on-demand video system to transmit to the set-top-box the available on-demand video (*e.g.*, the music video for the song entitled "Close") comprises the set-top-box transmitting to the on-demand video system an on-demand request message (*e.g.*, a message indicating that the thumbnail or title identifying the music video for the song entitled "Close" was selected) configured to cause the on-demand video system to transmit to the set-top-box the available on-demand video (*e.g.*, the music video for the song entitled "Close").

Exhibit 5: Stingray's Infringement of the '121 Patent

#	'121 Patent	Stingray Music System/Method
		
7a	The method of claim 6,	*See* claim 6, above.
7b	wherein the media channel is a digital music channel.	In the Stingray Music Method, the media channel is a digital music channel. *See, e.g.*, AT&T Newsroom "Stingray Music Brings All Good Vibes to AT&T U-verse Customers" (Oct. 29, 2014), available at about.att.com/story/stingray_music_app_on_uverse_tv.html (last accessed August 4, 2016) ("the new Stingray Music app, available at no additional charge, will have more than 100 streaming music channels") (MC-Stingray00119568); Stingray Music website "Continuous music service," available at http://music.stingray.com/en_US/about/baseService (last accessed August 4, 2016) ("The Stingray Music continuous music network provides its listeners with a selection of close to fifty music channels, all commercial-free and uninterrupted, that cover a large variety of music genres, from rock to pop to jazz, to classical or international, delivered in pristine quality digital audio.") (MC-Stingray00119561).
8a	The method of claim 6,	*See* claim 6, above.

Exhibit 5: Stingray's Infringement of the '121 Patent

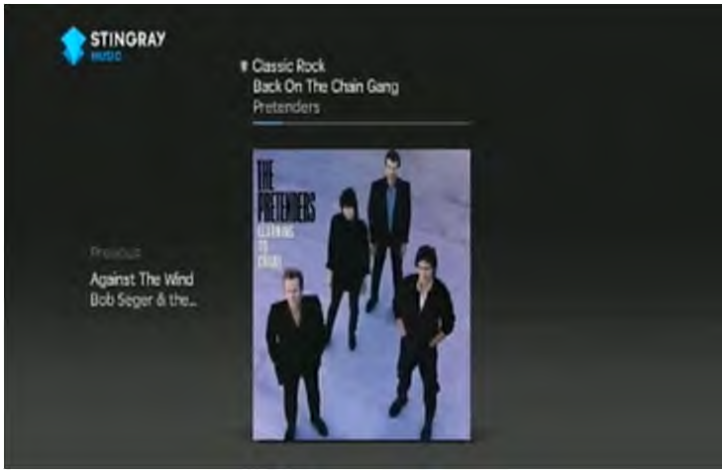
#	'121 Patent	Stingray Music System/Method
8b	wherein the audio data is associated with an artist and music format, and the meta information comprises information for identifying the artist and/or music format.	In the Stingray Music Method, the audio data is associated with an artist and music format (*e.g.*, "Pretenders," "Classic Rock"), and the meta information comprises information for identifying the artist and/or music format (*e.g.*, information identifying the art "Pretenders," and/or music format "Classic Rock"). 
10a	The method of claim 6, further comprising:	*See* claim 6, above.
10b	causing the client system to display a second selectable element;	The Stingray Music Method causes the client system to display a second selectable element (*e.g.*, the "Rock & Alternative" selectable element).

Exhibit 5: Stingray's Infringement of the '121 Patent

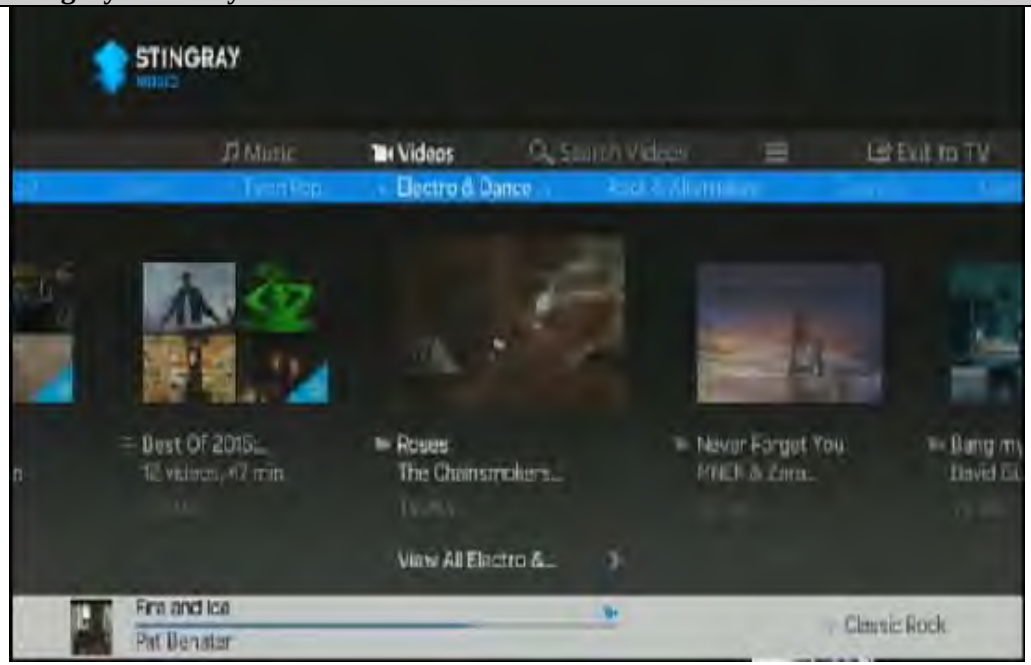
#	'121 Patent	Stingray Music System/Method
		
10c	providing information to the client system that causes the client system to transmit to the on-demand system information indicating that the second element was selected in response to the user selecting the second element;	The Stingray Music method provides information (*e.g.*, an indication of a selection of "Rock & Alternative") to the client system that causes the client system to transmit to the on-demand system information indicating that the second element was selected in response to the user selecting the second element (*e.g.*, the user activated the "Rock & Alternative" selectable element).

Exhibit 5: Stingray's Infringement of the '121 Patent

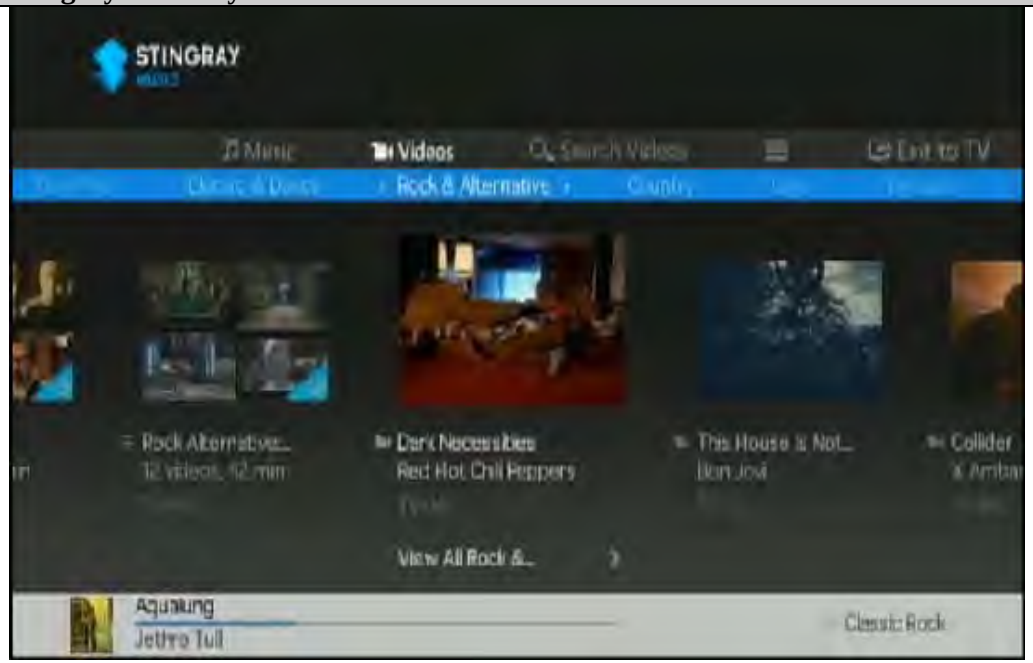
#	'121 Patent	Stingray Music System/Method
		
10d	after the on-demand system receives the information indicating that the second element was selected, transmitting from the on-demand system to the client system information identifying a set of videos, wherein	In the Stingray Music Method, after the on-demand system receives the information indicating that the second element was selected, transmitting from the on-demand system to the client system information identifying a set of videos (*e.g.*, thumbnail images identifying a set of videos).

Exhibit 5: Stingray's Infringement of the '121 Patent

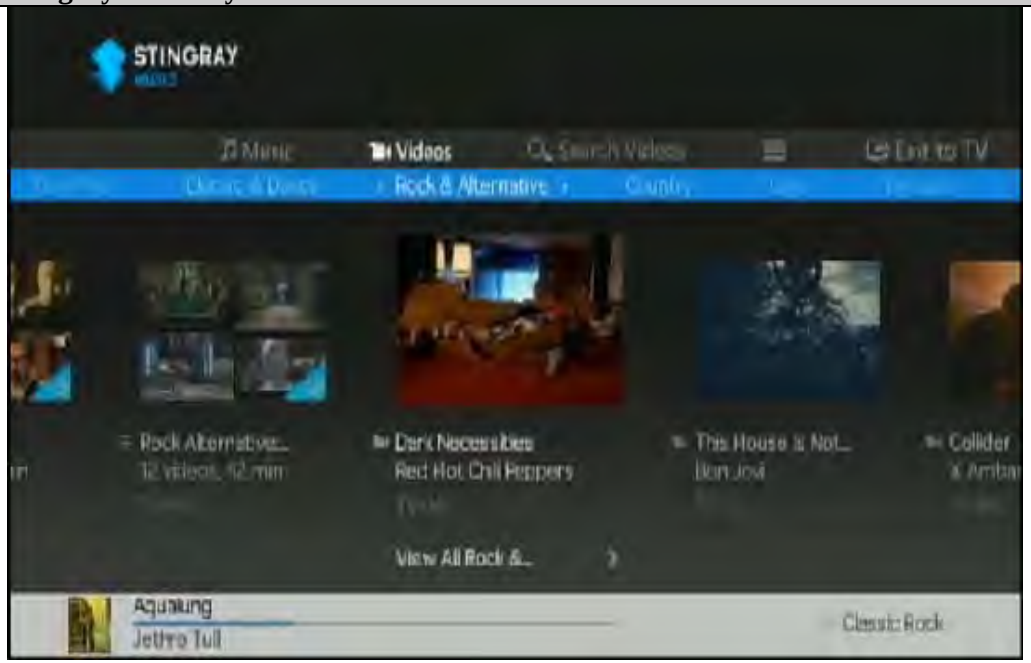
#	'121 Patent	Stingray Music System/Method
		
10e	each video in said set is associated with a format associated with the broadcast media channel isolated by the client system when the user selected the second element.	In the Stingray Music Method, each video in said set is associated with a format (*e.g.*, "Rock & Alternative") associated with the broadcast media channel isolated by the client system when the user selected the second element (*e.g.*, the "Rock & Alternative" selectable element).
11a	The method of claim 6, further comprising:	*See* claim 6, above.
11b	causing the client system to display a second selectable element;	The Stingray Music Method causes the client system to display a second selectable element (*e.g.*, the "Most Popular" selectable element).

Exhibit 5: Stingray's Infringement of the '121 Patent

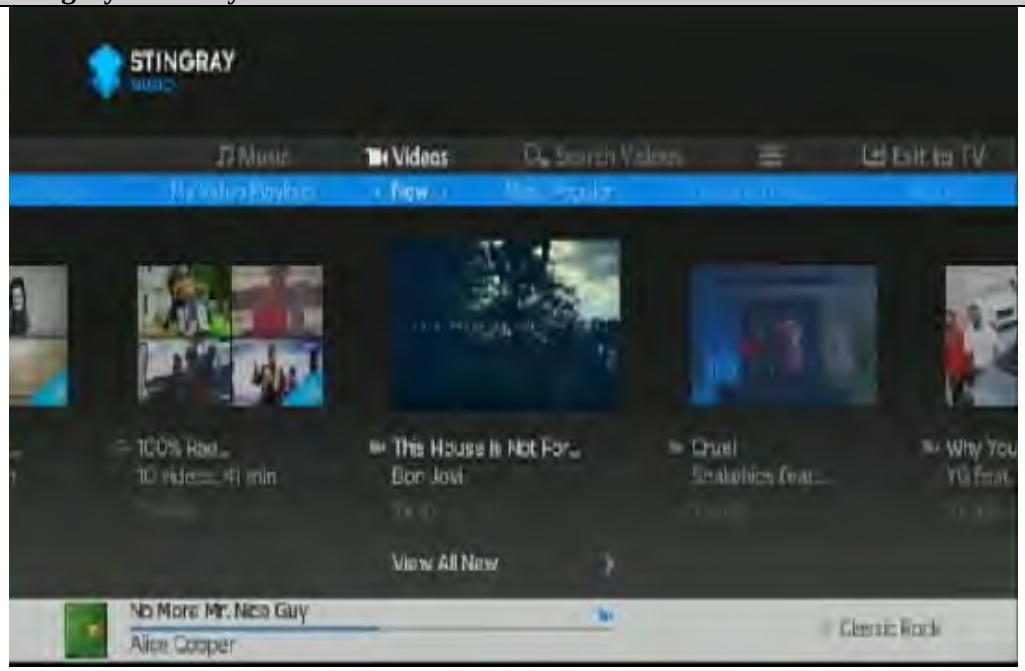
#	'121 Patent	Stingray Music System/Method
		
11c	providing information to the client system that causes the client system to transmit to the on-demand system information indicating that the second element was selected in response to the user selecting the second element;	The Stingray Music Method provides information to the client system (*e.g.*, an indication of a selection of "Most Popular") that causes the client system to transmit to the on-demand system information (*e.g.*, an indication of an activation of "Most Popular") indicating that the second element was selected in response to the user selecting the second element (*e.g.*, in response to the user selecting "Most Popular").

Exhibit 5: Stingray's Infringement of the '121 Patent

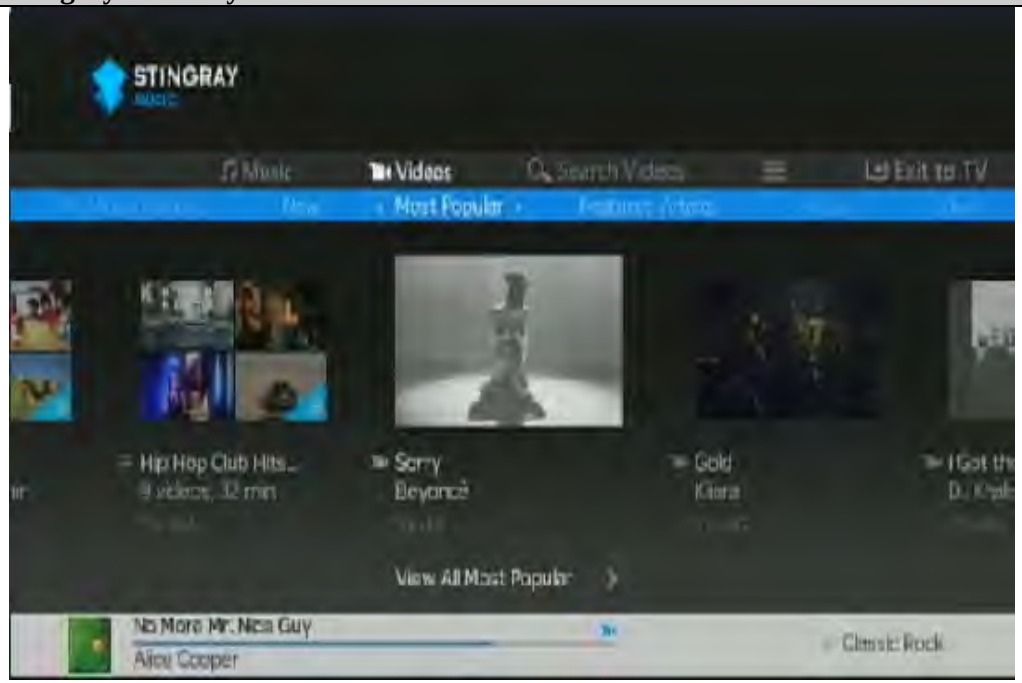
#	'121 Patent	Stingray Music System/Method
		
11d	after the on-demand system receives the information indicating that the second element was selected, transmitting from the on-demand system to the client system information identifying a set of popular music videos within an area in which the client system is located.	The Stingray Music Method, after the on-demand system receives the information indicating that the second element was selected (*e.g.*, an indication that the "Most Popular" element was selected), transmitting from the on-demand system to the client system information identifying a set of popular music videos within an area in which the client system is located (*e.g.*, thumbnail images identifying a set of popular music videos in an area in which the client system is located).

Exhibit 5: Stingray's Infringement of the '121 Patent

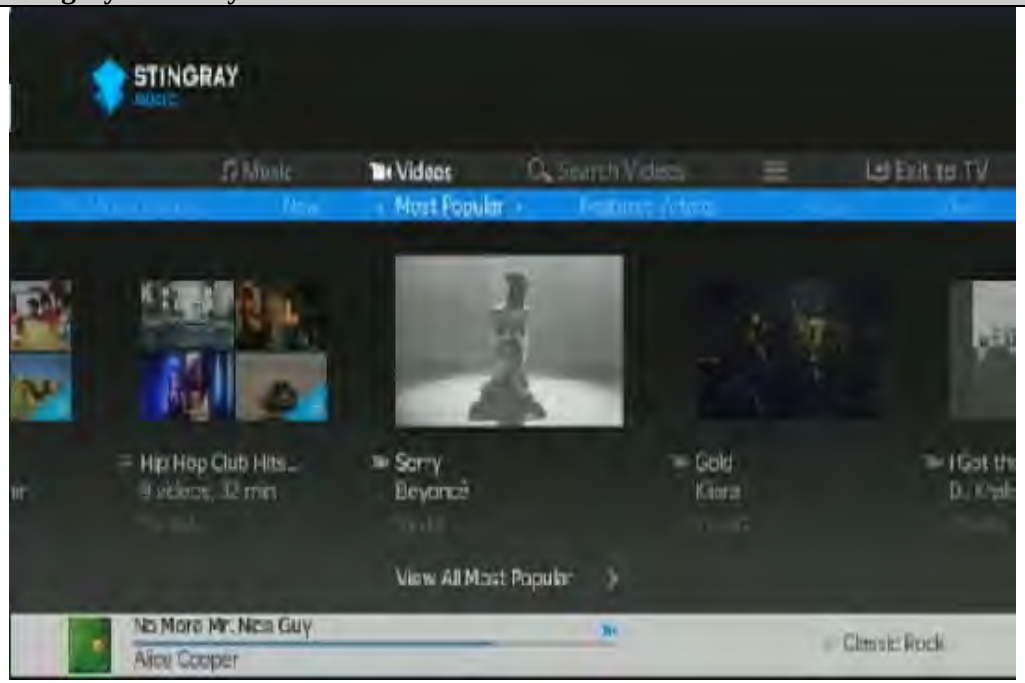
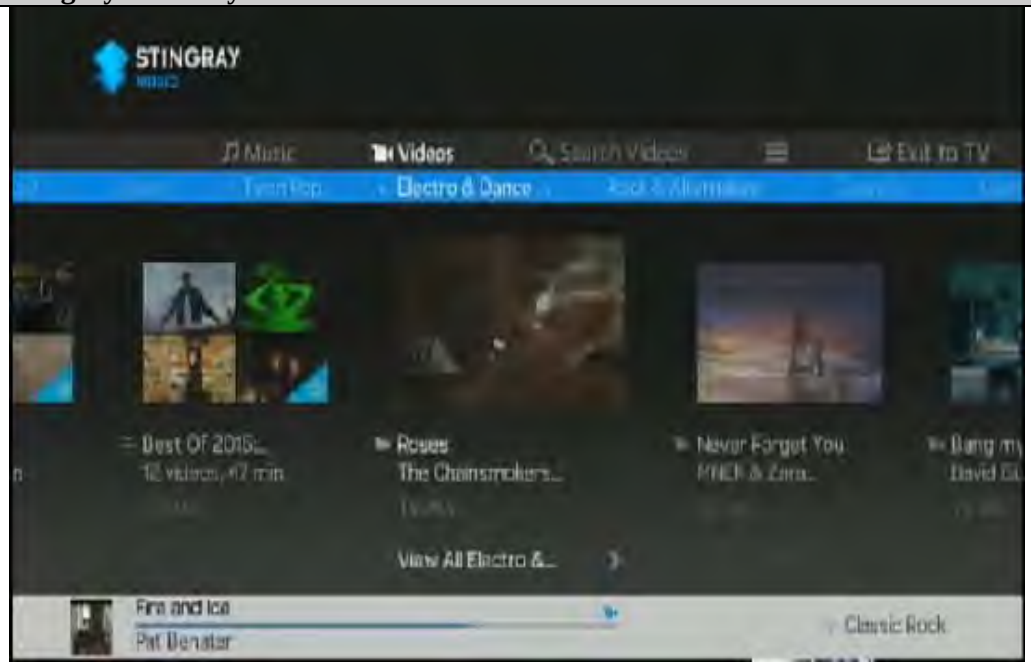
#	'121 Patent	Stingray Music System/Method
		
12a	The method of claim 6, further comprising:	*See* claim 6, above.
12b	causing the client system to display a second selectable element;	The Stingray Music System causes the client system to display a second selectable element (*e.g.*, the "Rock & Alternative" selectable element).

Exhibit 5: Stingray's Infringement of the '121 Patent

#	'121 Patent	Stingray Music System/Method
		
12c	providing information to the client system that causes the client system to transmit to the on-demand system information indicating that the second element was selected in response to the user selecting the second element; and	The Stingray Music Method provides information (*e.g.*, an indication of a selection of "Rock & Alternative") to the client system that causes the client system to transmit to the on-demand system information indicating that the second element was selected in response to the user selecting the second element (*e.g.*, the user activated the "Rock & Alternative" selectable element).

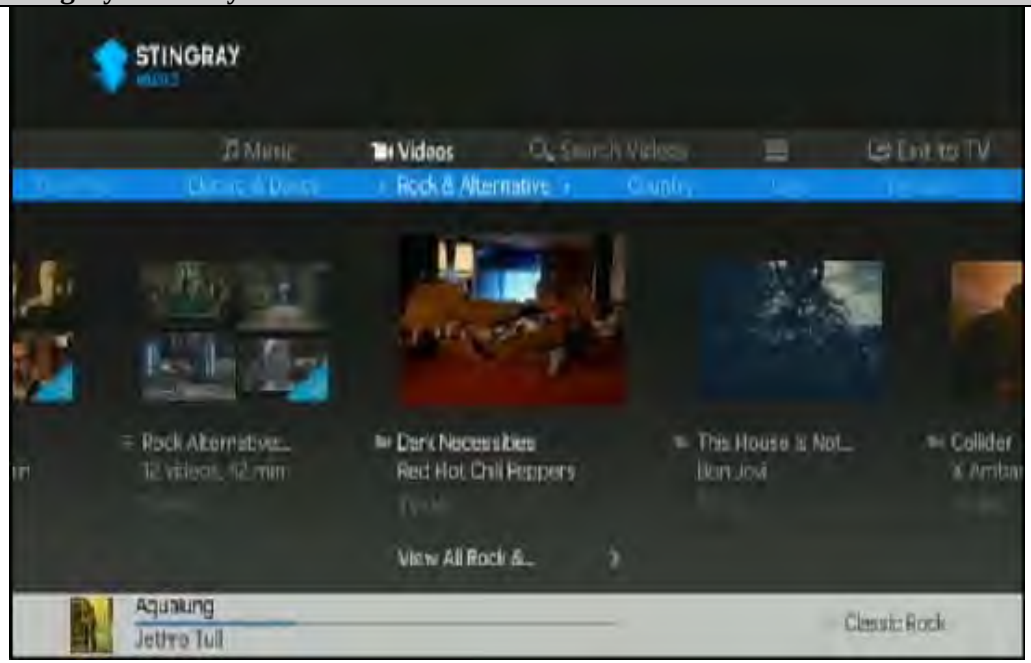
#	'121 Patent	Stingray Music System/Method
		
12d	after the on-demand system receives the information indicating that the second element was selected, transmitting from the on-demand system to the client system information identifying a set of sub-categories associated with a format associated with the broadcast media channel isolated by the client system when the user selected the second element.	The Stingray Music Method, after the on-demand system receives the information indicating that the second element was selected, transmits from the on-demand system to the client system information identifying a set of sub-categories (*e.g.*, artists) associated with a format (*e.g.*, "Rock & Alternative") associated with the broadcast media channel isolated by the client system when the user selected the second element.

Exhibit 5: Stingray's Infringement of the '121 Patent

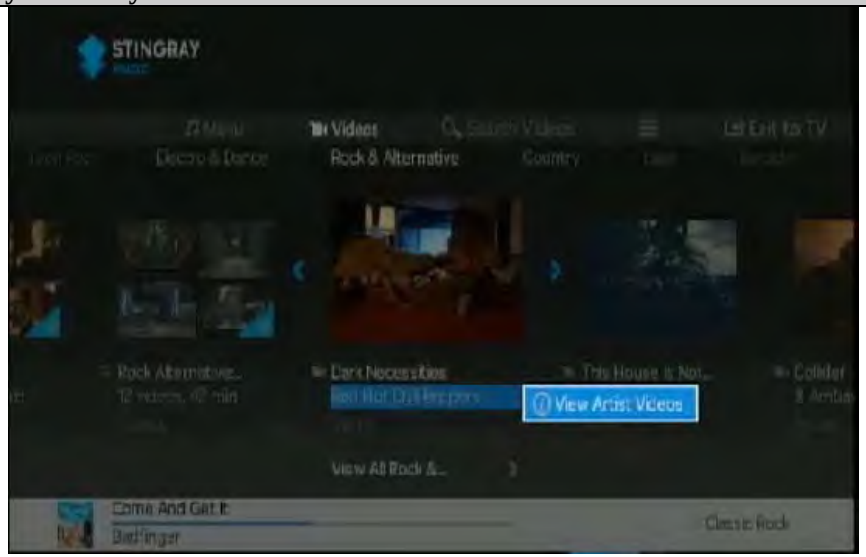
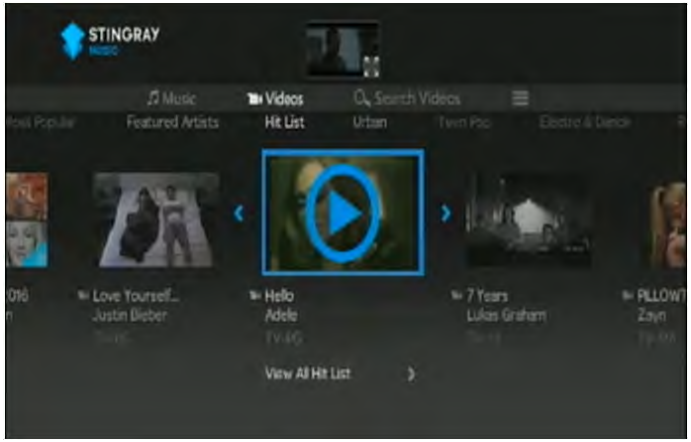
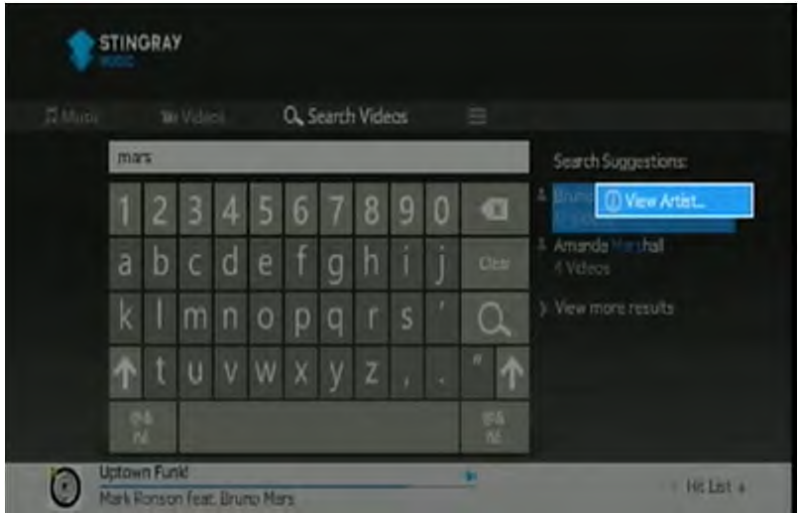
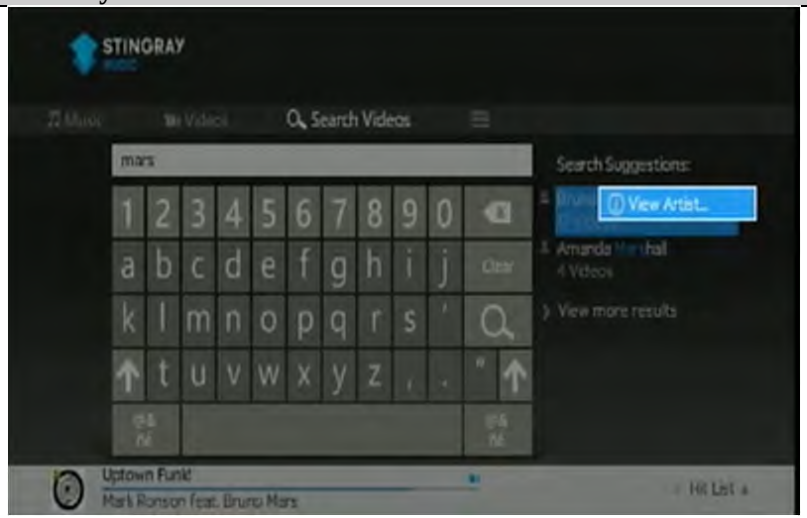
#	'121 Patent	Stingray Music System/Method
		
14a	A method for providing an on-demand service to a user of a set-top-box, comprising:	The Stingray Music Method, which includes the Stingray Music TV app on AT&T's U-verse® platform, is a method for providing an on-demand service to a user of a set-top-box. *See, e.g.*, Stingray Music Website "Music Videos on Demand Service," available at http://music.stingray.com/en_US/about/MVOD (last accessed August 5, 2016) ("[t]he Stingray Music service offering now includes Music Videos on Demand") (MC-Stingray00119564).

Exhibit 5: Stingray's Infringement of the '121 Patent

#	'121 Patent	Stingray Music System/Method
		 
14b	receiving at the set-top-box via a cable connected to a network a media channel comprising a stream of audio and video	The Stingray Music Method receives at the set-top-box via a cable connected to a network (*e.g.*, AT&T's U-verse® distribution network) a media channel (*e.g.*, the "Hit List" media channel) comprising a stream of audio and video data (*e.g.*, audio corresponding to the song "Uptown Funk!" and video data including song title, artist

#	'121 Patent	Stingray Music System/Method
	data;	name, and album art data). *See*, *e.g.*, AT&T Newsroom "Stingray Music Brings All Good Vibes to AT&T U-verse Customers" (Oct. 29, 2014), available at about.att.com/story/stingray_music_app_on_uverse_tv.html (last accessed August 4, 2016) ("the new Stingray Music app, available at no additional charge, will have more than 100 streaming music channels") (MC-Stingray00119568); Stingray Music website "Continuous music service," available at http://music.stingray.com/en_US/about/baseService (last accessed August 4, 2016) ("The Stingray Music continuous music network provides its listeners with a selection of close to fifty music channels, all commercial-free and uninterrupted, that cover a large variety of music genres, from rock to pop to jazz, to classical or international, delivered in pristine quality digital audio.") (MC-Stingray00119561). 
14c	the set-top-box displaying on a display device video corresponding to the video data stream;	In the Stingray Music Method, the set-top-box displays on a display device video corresponding to the video data stream (*e.g.*, video corresponding to the song title, artist name, and album art data for the song "Uptown Funk!").

#	'121 Patent	Stingray Music System/Method
		
14d	while displaying said video, the set-top-box receiving on-demand video information transmitted via the cable connected to the network;	In the Stingray Music Method, while displaying said video (*e.g.*, the video corresponding to the song title, artist name, and album art data for the song "Uptown Funk!"), the set-top-box receives on-demand video information (*e.g.*, search suggestions resulting from the searching on-demand videos for "mars") transmitted via the cable connected to the network.

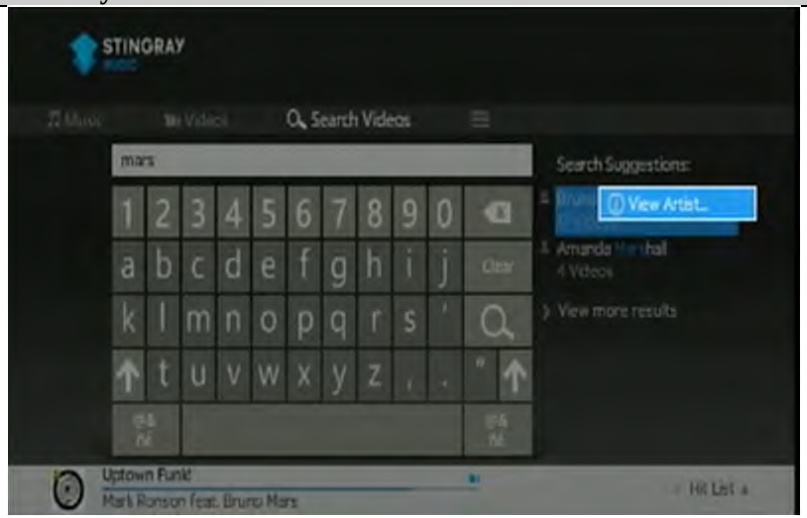
#	'121 Patent	Stingray Music System/Method
		
14e	the set top box displaying on the display device, as a result of receiving the on-demand video information, a user selectable element for requesting information identifying a set of available on-demand videos while also displaying the video corresponding to the video data stream so that the user can see the user selectable element while also seeing the displayed video corresponding to the video data stream, the user selectable element being associated with the set of available on-demand videos;	In the Stingray Music Method, the set top box displays on the display device, as a result of receiving the on-demand video information (*e.g.*, the search suggestions resulting from searching on-demand videos for "mars"), a user selectable element (*e.g.*, a user selectable element for the suggested search for Bruno Mars videos) for requesting information identifying a set of available on-demand videos (*e.g.*, the set of 12 available Bruno Mars on-demand videos) while also displaying the video corresponding to the video data stream (*e.g.*, the video corresponding to the song title, artist name, and album art data for the song "Uptown Funk!") so that the user can see the user selectable element (*e.g.*, the user selectable element for the suggested search for Bruno Mars videos) while also seeing the displayed video corresponding to the video data stream (*e.g.*, the video corresponding to the song title, artist name, and album art data for the song "Uptown Funk!"). The user selectable element (*e.g.*, the user selectable element for the suggested search for Bruno Mars videos) is associated with the set of available on-demand videos (*e.g.*, the set of 12 available Bruno Mars on-demand videos).

Exhibit 5: Stingray's Infringement of the '121 Patent

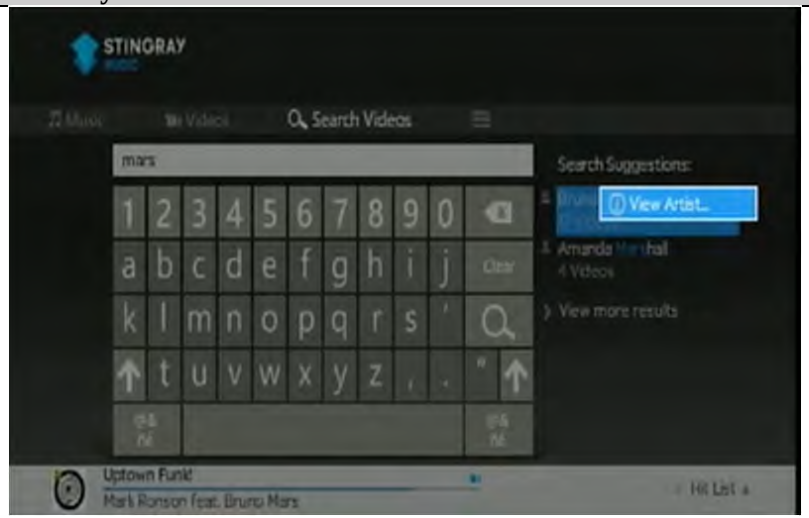
#	'121 Patent	Stingray Music System/Method
		
14f	in response to the user of the client system selecting the user selectable element, the set-top-box transmitting to an on-demand system an on-demand request message for causing the on-demand system to transmit to the set-top-box the information identifying the set of available on-demand videos;	In the Stingray Music Method, in response to the user of the client system selecting the user selectable element (*e.g.*, the user selectable element for the suggested search for Bruno Mars videos), the set-top-box transmits to an on-demand system (*e.g.*, the UbiquiCAST on-demand video system operated by Stingray alone or in conjunction with AT&T U-verse®) an on-demand request message for causing the on-demand system to transmit to the set-top-box the information identifying the set of available on-demand videos (*e.g.*, information identifying the set of 12 available Bruno Mars on-demand videos).

Exhibit 5: Stingray's Infringement of the '121 Patent

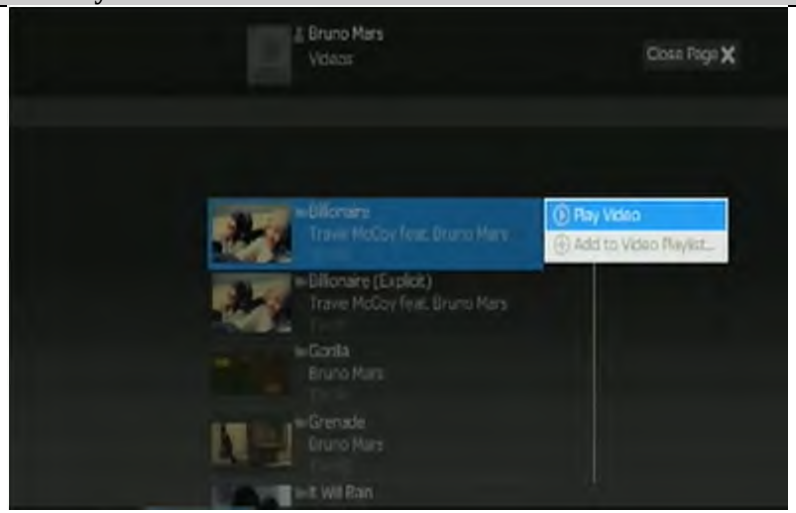
#	'121 Patent	Stingray Music System/Method
		
14g	the set-top-box receiving displaying a menu of the available on-demand videos as a result of receiving the information.	In the Stingray Music Method, the set-top-box displays a menu of the available on-demand videos (*e.g.*, a menu of the available Bruno Mars on-demand videos) as a result of receiving the information.

Exhibit 5: Stingray's Infringement of the '121 Patent

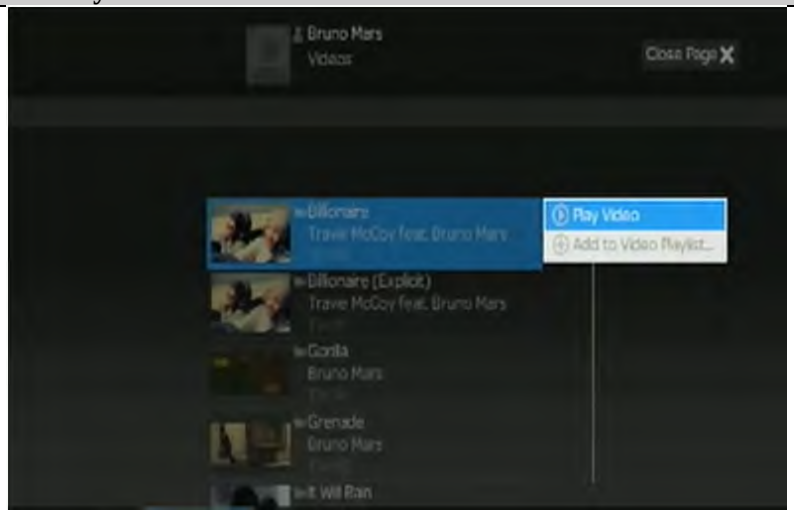
#	'121 Patent	Stingray Music System/Method
		
15a	The method of claim 14, further comprising:	*See* claim 14, above.
15b	in response to the user selecting one of the available on-demand videos identified in the menu, the set-top-box transmitting to an on-demand video system a second on-demand request message for causing the on-demand video system to transmit to the set-top-box the selected available on-demand video.	The Stingray Music Method, in response to the user selecting one of the available on-demand videos identified in the menu (*e.g.*, the on-demand video for the song "Billionaire"), the set-top-box transmits to an on-demand video system (*e.g.*, the UbiquiCAST on-demand video system operated by Stingray alone or in conjunction with AT&T U-verse®) a second on-demand request message for causing the on-demand video system to transmit to the set-top-box the selected available on-demand video (*e.g.*, the on-demand video for the song "Billionaire").

Exhibit 5: Stingray's Infringement of the '121 Patent

#	'121 Patent	Stingray Music System/Method
		

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

MUSIC CHOICE, Plaintiff, v. STINGRAY DIGITAL GROUP INC. and STINGRAY MUSIC USA, INC., Defendants.	§	C.A. No: 2:16-cv-00586-JRG-RSP LEAD CASE

DEFENDANTS' FIRST NOTICE OF DEPOSITION
OF PLAINTIFF MUSIC CHOICE

PLEASE TAKE NOTICE that, pursuant to Fed. R. Civ. Pro. 30(b)(6), Defendants Stingray Digital Group Inc. and Stingray Music USA, Inc. (collectively, "Stingray") will take the deposition of Plaintiff Music Choice on June 28, 2017 at 9:00 a.m. at the offices of Greenberg Traurig LLP, 2700 Two Commerce Square, 2001 Market Street, Philadelphia, PA 19103, or at such other time and place as the parties mutually agree. The deposition will continue from day to day until completed, Saturdays, Sundays, and holidays excepted.

The deposition will be taken before a court reporter or other person authorized by law to administer oaths, and it will be recorded by stenographic means and/or videotape. The deposition will be taken for the purpose of discovery, for use in summary judgment briefing or at trial in this matter, and for any other purpose permitted under the Federal Rules of Civil Procedure. The scope of this deposition will likely include questions relating to information that has been designated Confidential - Outside Attorneys' Eyes Only and/or Confidential Source Code under the Protective Order (Dkt. 43) entered in this action.

Pursuant to Rule 30(b)(6), Music Choice shall designate a witness or witnesses to appear and testify at the taking of a deposition on each of the topics set forth in Schedule A. No less than one week prior to the date of the deposition, Music Choice shall identify each person, including his or her name and employer, who will testify on its behalf pursuant to this notice with regard to each topic or part thereof.

You are invited to attend and to participate.

Dated: April 19, 2017

Respectfully submitted,

/s/ Joshua L. Raskin

Scott J. Bornstein (NY Bar # 2737492)
Joshua L. Raskin (NY Bar # 2816783)
Allan A. Kassenoff (NY Bar # 2964575)
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Mary-Olga Lovett (TX Bar # 00789289)
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Email: LovettM@gtlaw.com
Email: TrevinoR@gtlaw.com

ATTORNEYS FOR DEFENDANTS STINGRAY DIGITAL GROUP INC. AND STINGRAY MUSIC USA, INC.

T. Except where the context does not permit, the term "**including**" shall be without limitation.

U. Except where the context does not permit, the terms "**and**" and "**or**" shall be both conjunctive and disjunctive.

V. Except where the context does not permit, the terms "**each**" and "**any**" shall mean any and all.

W. "**Music Choice's Counterclaims**" shall mean the allegations asserted in Music Choice's Answer and Counterclaims in the Action, dated March 30, 2017.

X. "**Confidentiality Agreements**" shall mean the agreements referred to in paragraph 20 of Music Choice's Counterclaims.

Y. The "**May 7, 2013 Confidentiality Agreement**" shall mean the agreement referred to by that name in Paragraph 21 of Music Choice's Counterclaims.

Z. The "**June 18, 2013 Amendment**" shall mean the agreement referred to by that name in Paragraph 21 of Music Choice's Counterclaims.

AA. The "**January 8, 2016 Confidentiality Agreement**" shall mean the agreement referred to by that name in Paragraph 42 of Music Choice's Counterclaims.

Topics

1. Music Choice's policies and procedures for filing patent applications.

2. Music Choice's policies and procedures for determining whether an individual should be named as an inventor for a patent application.

3. All assignment(s) or other conveyance(s) of rights in any of the Patents-in-Suit, including any and all negotiations related thereto.

4. Music Choice's prosecution of the Patents-in-Suit.

99. All information provided to Stingray by Music Choice pursuant to the "sales discussions" referenced in Paragraph 54 of Music Choice's Counterclaims, including any communications and/or documents relating to that information.

100. All information provided to Stingray by Music Choice pursuant to the January 8, 2016 Confidentiality Agreement, including any communications and/or documents relating to that information.

101. All breaches of the May 7, 2013 Confidentiality Agreement alleged by Music Music Choice, including any communicaitons and/or documents relating to those breaches.

102. All actions taken by Music Choice in response to any breaches of the May 7, 2013 Confidentiality Agreement, including any communicaitons and/or documents relating to those actions.

103. All breaches of the June 18, 2013 Amendment alleged by Music Music Choice, including any communicaitons and/or documents relating to those breaches.

104. All actions taken by Music Choice in response to any breaches of the June 18, 2013 Amendment, including any communications and/or documents relating to those actions.

105. All breaches of the January 8, 2016 Confidentiality Agreement alleged by Music Choice, including any communications and/or documents relating to those breaches.

106. All actions taken by Music Choice in response to any breaches of the January 8, 2016 Confidentiality Agreement, including any communications and/or documents relating to those breaches.

107. Music Choice's allegation in Paragraph 64 of Music Choice's Counterclaims that "Music Choice has suffered and continues to suffer substantial injury," including any communications and/or documents relating to that allegation.

108. Music Choice's allegation in Paragraph 64 of Music Choice's Counterclaims that "Music Choice has suffered damages, including at least the loss of potential business as a direct and proximate result of Stingray's breach of the Confidentiality Agreements," including any communications and/or documents relating to that allegation.

109. Music Choice's allegation in Paragraph 66 of Music Choice's Counterclaims that "Music Choice has suffered and continues to suffer irreperable injury due to Stingray's breach of the Confidentiality Agreements," including any communications and/or documents relating to that allegation.

EXHIBIT 1

May 7, 2013

Private and Confidential

Eric Boyko
President & CEO
Stingray Digital Group Inc.
730 Wellington Street
Montreal, Quebec H3C 1T4
Canada

Dear Mr. Boyko:

In connection with Stingray Digital Group Inc.'s ("you" or "your") consideration of a possible acquisition of Music Choice (together with its subsidiaries, the "Company") ("Possible Transaction"), we may deliver to you, upon your execution and delivery of this letter agreement (the "Agreement"), certain information about the business and operations of the Company. As a condition to your being furnished such information, you agree to treat any information concerning the Company which is furnished to you by or on behalf of the Company, whether furnished before, on or after the date of this Agreement and whether furnished orally, visually or in written, electronic or any other form or manner, together with analyses, compilations, studies or other documents or records prepared by you or any of your affiliates or any of your or their respective Agents (as defined below) to the extent that such analyses, compilations, studies, documents or records contain or otherwise reflect or are generated from such information (collectively referred to herein as the "Evaluation Material"), in accordance with the provisions of this Agreement. The term "Evaluation Material" does not include information which you demonstrate (i) was or becomes generally available to the public other than as a result of any disclosure by you or your directors, officers, managers, general partners, employees, agents, affiliates or advisors (collectively "Agents") in breach of this Agreement, (ii) was or becomes available to you from a source other than the Company or any Company Parties (as defined below), provided that such source is not and was not to your knowledge after reasonable inquiry bound by a confidentiality agreement with the Company or otherwise prohibited from transmitting the information to you by a contractual, legal or fiduciary obligation or (iii) is independently developed by you without reference to the Evaluation Material (as evidenced by written records). As used in this Agreement, the term "person" shall refer to any individual, corporation, company, partnership, trust, limited liability company or other entity or third party.

You hereby agree that the Evaluation Material will be used by you solely for the purpose of evaluating a Possible Transaction between you and the Company. In addition, you agree not to disclose the Evaluation Material to any person and agree to keep the Evaluation Material confidential; provided, however, that the Evaluation Material may be disclosed to your Agents who need to know such information for the purposes of assisting or advising you in connection with your evaluation of any such Possible Transaction between you and the Company, it being agreed that such Agents shall be informed by you of the confidential nature of such information and that by receiving such information they are agreeing to be bound by this Agreement. You agree to take all reasonable measures to protect the secrecy of and avoid disclosure or use of the Evaluation Material in order to prevent it from falling into the public domain or the possession of persons other than those of your Agents authorized by this Agreement to have the Evaluation Material. You agree to promptly notify the Company in writing of any misuse or misappropriation of the Evaluation Material which may come to your attention and you shall be responsible for any breach of this Agreement by you or any of your Agents.

You agree that in considering the Possible Transaction and in reviewing the Evaluation Material, you will act solely for your own benefit and not as a broker or as part of a group with any unaffiliated parties. You agree that without the prior written consent of the Company, neither you nor your affiliates will act as a joint bidder or co-

bidder with any other unaffiliated person with respect to the Possible Transaction or enter into, directly or indirectly, any negotiations, agreements or understandings with any such person (other than any of your Agents in their capacity as such) with respect to a Possible Transaction or similar transaction involving the sale of all or substantially all of the Company's equity securities or business. Notwithstanding anything contained herein to the contrary, in no event shall equity or debt financing sources be included as or deemed to be your Agents.

Without the prior written consent of the Company, you agree that you will not, and will direct and cause your Agents not to, disclose to any person either the fact that you have requested or received the Evaluation Material, that any investigations, discussions or negotiations are taking place concerning a Possible Transaction or any of the terms, conditions or other facts with respect to any such Possible Transaction, including the status thereof (collectively, the "Discussion Information"). All of the Evaluation Material is and shall remain the sole and exclusive property of the Company, and you shall not acquire any license, intellectual property rights or legal or equitable interest in the Evaluation Material.

In the event that you or any of your Agents are legally required or requested in any proceeding to disclose any Evaluation Material or Discussion Information, you agree to give the Company, to the extent legally permissible, prompt notice of such requirement or request and the information requested thereby so that the Company may seek an appropriate protective order. It is further agreed that, if in the absence of a protective order you or any of your Agents are nonetheless, in the opinion of your or their (as applicable) outside counsel after consultation with us and our counsel, legally required to disclose Evaluation Material or Discussion Information, you or they (as applicable) may disclose such information that you or they (as applicable) are legally required to disclose without liability hereunder; provided, however, that you or they (as applicable) give the Company written notice of the information to be disclosed (including copies of the relevant portions of the relevant documents) as far in advance of its disclosure as is practicable, use all reasonable efforts to limit any such disclosure to the precise terms of such requirement and use best efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to such information. In any event, you and they will not oppose action by us to obtain a protective order or other appropriate remedy to ensure that confidential treatment will be accorded to such information. Without limiting the foregoing, you hereby represent and warrant to the Company that to your knowledge, no disclosure of any Evaluation Material or Discussion Information is now required of you or any of your Agents.

At any time upon the Company's request, you shall promptly redeliver to the Company or destroy (certified as described below) all tangible material of any type containing or reflecting any information contained in the Evaluation Material (whether prepared by the Company or otherwise, and whether in your possession or the possession of any of your Agents), and will not retain any copies, extracts or other reproductions, in whole or in part, of such material. All documents, notes, summaries, analysis, memoranda and other writings whatsoever (including copies, extracts or other reproductions) prepared by you or your Agents based on the information contained in the Evaluation Material shall be destroyed, and such destruction shall be certified in writing to the Company by an authorized officer supervising such destruction. The redelivery or destruction of any such material shall not relieve you or your Agents of your or their obligations under this Agreement. Notwithstanding the foregoing, you may retain one copy of the Evaluation Materials with legal counsel in accordance with bona fide document retention policies, and you will not be required to erase electronically stored Evaluation Material that has been saved to a secure archival file in accordance with your and your Agents' respective bona fide electronic archive practices, on the condition that, except as otherwise required by applicable law, (a) personnel whose functions are not primarily information technology do not have access to such retained copies and (b) personnel whose functions are primarily information technology in nature access such copies only as reasonably necessary for the performance of their information technology duties; provided that, in each case, such retained copies shall remain subject to the terms of this Agreement.

For a period of two years from the date of this Agreement, without the prior written consent of the Company, you shall not, directly or indirectly, in any individual, representative or other capacity, employ or engage, or solicit for employment or engagement any officer or employee of the Company or its affiliates, except that the foregoing shall not prohibit the use of a general solicitation (such as an advertisement) not specifically directed to such officers or employees. If the foregoing provision shall be adjudicated to be invalid or unenforceable, such provision shall be amended to reduce the time period or otherwise amended as is necessary to cause such

provision to be valid or enforceable, and such amendment shall apply only with respect to the operation of this provision in the particular jurisdiction in which such adjudication is made.

Without the Company's prior written consent, you agree that until the earlier of the consummation of a Possible Transaction with you or for two years from the date of this Agreement, you will not, directly or indirectly, and will cause your affiliates not to initiate or maintain contact in connection with the Possible Transaction (excluding contacts made in the ordinary course of the Company's business) with any officer, director or employee of the Company or any of the Company's customers, distributors or vendors regarding the business, operations, prospects or finances of the Company. Unless otherwise expressly agreed to by the Company, all (i) communications with the Company regarding any Possible Transaction, (ii) requests for additional information from the Company in connection with the Possible Transaction, (iii) requests for facility tours or management meetings with respect to the Possible Transaction, and (iv) discussions or questions regarding procedures with respect to the Possible Transaction, will be submitted or directed to LionTree Advisors LLC or representatives of the Company it designates.

The parties to this Agreement share a common legal and commercial interest in the Evaluation Material which is and remains subject to all applicable privileges, including attorney – client privilege, anticipation of litigation privilege, work product privilege and privilege in respect of "without prejudice" communications. No waiver of any privilege is implied by the disclosure of Evaluation Material to any person pursuant to the terms of this Agreement.

You acknowledge and agree that none of the Company or any of its directors, officers, partners, employees, affiliates, controlling persons, representatives, or agents (collectively "Company Parties") is making any representation or warranty, express or implied, as to the accuracy or completeness of the Evaluation Material, and none of the Company or any Company Parties will have any liability to you or any other person or entity resulting from use of the Evaluation Material by you or any of your Agents.

You agree that money damages would not be a sufficient remedy for any breach of this Agreement by you, that the Company shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach or threatened breach, without proof of actual damages or the requirement to post a bond or other security, and that you hereby waive and agree not to assert any claim to the contrary. Such remedy shall not be deemed to be the exclusive remedy for your breach of this Agreement, but shall be in addition to all other remedies available at law or equity to the Company.

You acknowledge that any Evaluation Material disclosed pursuant to this Agreement shall be treated in a manner consistent with all applicable federal, foreign and state antitrust or competition laws or regulations, including without limitation, the Sherman Act and the Hart-Scott-Rodino Antitrust Improvements Act (collectively, the "Competition Laws"), and to the extent necessary, you will cooperate with the Company to establish reasonable protocols necessary to facilitate compliance with all Competition Laws.

No failure or delay by the Company in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise of any right, power or privilege. The covenants and obligations made by you under this Agreement shall survive the termination of any discussions and/or business relationship between you and the Company.

You represent and warrant to the Company that: (i) this Agreement is a valid and binding obligation of yours, enforceable against you in accordance with its terms, and (ii) the execution and delivery of this Agreement by you does not conflict with or constitute a violation of or default under your organizational documents, any statute, law, regulation, order or decree applicable to you, or any contract, commitment, agreement, arrangement or restriction of any kind to which you are a party or by which you are bound. You shall indemnify and hold the Company harmless from any breach by you or your Agents of this Agreement.

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York applicable therein, without giving effect to the principles of conflict of laws thereof. The terms, conditions and covenants of this Agreement shall be binding upon you, your Agents, and each of your respective successors,

and are for the benefit of the Company and its successors and assigns. This Agreement may not be assigned or delegated by you and any such attempted assignment or delegation shall be void *ab initio*. You, for yourself and your successors and assigns, also hereby irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of the State of New York situated in the borough of Manhattan and of the United States of America in the Southern District of New York (as well as any courts to which an appeal from such courts may be heard) for any actions, suits or proceedings arising out of or relating to this Agreement and the transactions contemplated hereby (and you agree not to commence any action, suit or proceeding relating thereto except in such courts), and waive any objection to the venue of any proceeding in such court or that such court provides an inconvenient forum. You further agree that any service of any process, summons, notice or document sent by registered or certified mail (postage pre-paid) to your address set forth above shall be effective service of process for any action, suit or proceeding brought against you in any such court. Nothing herein shall affect the right to serve process in any other manner permitted by law. This Agreement may be executed in one or more counterparts (which may be delivered by electronic means with the same effect as physically-delivered counterpart), each of which shall be an original, with the same effect as if the signatures thereto were upon one instrument.

Except as expressly provided in this Agreement, no legal or equitable duties, responsibilities or rights are created hereby, and nothing in this Agreement nor any conduct of the parties (other than the execution of a definitive agreement by you and the Company providing for the Possible Transaction) shall constitute a binding offer or agreement for the purchase of the Company, its assets, shares or businesses by you. You acknowledge that the Company reserves the right, in its sole discretion, to conduct any process with respect to the Possible Transaction as it determines in its sole discretion, reject any and all proposals made by you or any of your Agents with regard to a Possible Transaction, to negotiate with other interested parties, to terminate discussions and negotiations with you at any time, and to enter into a definitive agreement without prior notice to you or any other persons.

This Agreement contains the entire agreement between you and the Company regarding its subject matter and supersedes all prior agreements, understandings, arrangements and discussions between you and the Company regarding such subject matter.

You hereby acknowledge that Dechert LLP ("Legal Counsel") represents the Company and, if for any reason Legal Counsel's representing the Company in negotiations with you would create a conflict of interest, because of Legal Counsel's representation of you in other unrelated matters or otherwise, you hereby waive any such conflict and agree that Legal Counsel may represent the Company in connection with the transactions contemplated hereby.

If any provision of this Agreement is determined to be illegal, invalid or unenforceable by an arbitrator or any court of competent jurisdiction from which no appeal exists or is taken, that provision will be severed from this Agreement and the remaining provisions will remain in full force and effect.

* * * * *

If you are in agreement with the foregoing, please so indicate by signing and returning one copy of this Agreement, whereupon it will constitute our agreement with respect to the subject matter hereof. No modification of or amendment to this Agreement shall be binding unless in writing and executed by both parties.

Very truly yours,

MUSIC CHOICE

By: _____

Its: Senior Vice President + General Counsel

Confirmed and Agreed to:

Stingray Digital Group Inc.

By: _____

Its: President & CEO

Date: May 8, 2013

[signature page to Confidentiality Agreement]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

MUSIC CHOICE,	)	
	)	
Plaintiff,	)	
	)	**C.A. No. 2:16-CV-0586-JRG-RSP (Lead)**
v.	)	
	)	
STINGRAY DIGITAL GROUP INC. and STINGRAY MUSIC USA, INC.	)	**Jury Trial Demanded**
	)	
	)	
Defendants.	)	

THIRD AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Music Choice, by its undersigned counsel, with knowledge as to its own acts and status, and upon information and belief as to the acts and status of others, for its Third Amended Complaint against defendant Stingray Digital Group Inc. and Stingray Music USA, Inc. (individually and/or collectively ñStingrayò), alleges as follows:

PRELIMINARY STATEMENT

1. This is an action for patent infringement under the United States patent laws, 35 U.S. C. § 1, *et seq*. The accused instrumentalities include the Stingray Music products and services (ñStingray Music System/Methodò) that provide digital audio music channels and/or music videos on demand through, without limitation, cable operator, satellite, Internet Protocol (IP) television (IPTV), mobile, broadband, ñover the topò/OTT and/or website platforms, and are made, used, sold and/or offered for sale in, and/or imported into, the United States, in the State of Texas, and in this judicial district, by defendant Stingray, by Service Providers (*e.g.*, multichannel video programming distributors (MVPDs), multiple-system operators (MSOs), affiliates, and like entities) of the Stingray Music System/Method, and by subscribers/end-users

of the Stingray Music System/Method. By way of example, the Stingray Music System/Method infringes at least claims 1 and 8 of U.S. Patent No. 8,769,602; claims 1, 12 and 17 of U.S. Patent No. 9,357,245; claims 1 and 8 of U.S. Patent No. 7,320,025; claims 1, 6, 11, and 16 of U.S. Patent No. 9,351,045; and claims 1, 6, and 14 of U.S. Patent No. 9,414,121, which patents are owned for all purposes by Plaintiff Music Choice (collectively, the ñPatents-in-Suitò).

THE PARTIES

2. Plaintiff Music Choice is a Pennsylvania general partnership, and has its principal place of business at 650 Dresher Road, Horsham, PA 19044. Music Choice is doing business in this judicial district.

3. Music Choice is a pioneer in the digital music field. In 1991, the founders of Music Choice launched one of the first digital audio services in the World. Since that time, Music Choice has significantly expanded its programming services, and today provides a multi-platform music network. Music Choice has been, and continues to be, a leading innovator of the technology enabling the programming, production and distribution of video and audio music content for digital cable, satellite and IP television, broadband (PCs) and mobile devices.

4. Music Choiceôs products and services currently include 75 commercial interruption free audio music channels, 25 music video channels and single-play video on demand (VOD) content. Music Choiceôs music channels and VOD content are among the most listened to and watched in the United States. These products and services are available on a linear and/or ñTV Everywhereò basis. Music Choice currently has approximately 47.2 million monthly listeners averaging 28.2 hours per week, and in 2015 Music Choiceôs videos were the most watched free VOD content. Music Choiceôs VOD views represent 10% of all VOD views in participating networks.

5. Music Choice has spent considerable time, effort, and money over the years building its business in audio music channels, music video channels, video on demand services, and TV Everywhere services, developing and deploying proprietary digital audio and VOD technology, and protecting that technology by pursuing and securing patent rights.

6. Defendant Stingray Digital Group Inc. (ñStingray Digitalò) is a Canadian corporation with its principal place of business at 730 Wellington Street, Montreal, Quebec, Canada H3C 1T4. Stingray currently has over 250 employees across the world.

7. Defendant Stingray Music USA, Inc. (ñStingray Musicò) is a Delaware corporation, with its principal place of business at 2127 Ayrsley Town Blvd., Suite 202, Charlotte, North Carolina 28273. Stingray Music USA, Inc. is a wholly owned subsidiary of Stingray Digital.

8. Defendants Stingray Digital and Stingray Music are doing business in the United States, in the State of Texas, and in this judicial district.

JURISDICTION AND VENUE

9. This is a civil action for patent infringement arising under the patent laws, 35 U.S.C. §§ 1 *et seq.* This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

10. Stingray has solicited business in the State of Texas, transacted business within the State of Texas, and attempted to derive financial benefit from residents of the State of Texas, including benefits directly related to the instant patent infringement cause of action set forth herein.

11. Stingray has placed its infringing Stingray Music System into the stream of commerce, and practiced its infringing Stingray Music Method, throughout the United States

with the expectation that they will be used in this judicial district, which systems and methods have been used in this judicial district.

12. Stingray is subject to personal jurisdiction in this judicial district because it is present within, has minimum contacts with, and regularly conducts business in the State of Texas and the Eastern District of Texas. Music Choiceôs cause of action arises directly from Stingrayôs business contacts and other activities in the State of Texas and in this judicial district.

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

14. The Stingray Music System/Method has been, and continues to be, used and distributed by Stingray in the Eastern District of Texas. More specifically, Stingray has placed the Stingray Music System/Method into the stream of commerce throughout the United States, directly and/or through established channels, including through Service Providers and other parties, with the expectation and/or knowledge that the Stingray Music System/Method will be used, sold, and offered for sale in, and/or imported into, the State of Texas and in this judicial district.

15. Without limiting the foregoing, Stingray provides the Stingray Music System/Method to Service Providers and subscribers/end users in this judicial district through one or more transmission systems and receivers configured with Stingrayôs software applications to deliver audio and video programming services. For example, Stingrayôs music app is installed in set top-boxes located in Texas and is used to provide the Stingray Music System/Method via AT&Tôs U-Verse® TV services to subscribers/end users through receivers in this judicial district. Stingray further uploads new content and program scheduling data for the Stingray Music System/Method to content distribution network servers located in Texas.

THE PATENTS-IN-SUIT

16. U.S. Patent No. 8,769,602 (ñthe ô602 Patentò), entitled ñSystem And Method For Providing An Interactive, Visual Complement To An Audio Program,ò was duly and lawfully issued by the U.S. Patent and Trademark Office on July 1, 2014. A true and correct copy of the ô602 Patent is attached as Exhibit A.

17. The ô602 Patent lists David J. Del Beccaro, Stuart H. Farber, Kelley L. Giannetti, Donna M. OôNeill, Jeremy C. Rosenberg, Robert M. Steinberg, Christina B. Tancredi, and Ronald M. Yurman as inventors.

18. Music Choice is the owner of the ô602 Patent by valid assignment from the inventors. Music Choice owns all rights, title, and interest in the ô602 Patent, including the right to sue for and recover all past, present, and future damages for infringement of the ô602 Patent.

19. The Abstract of the ô602 Patent provides as follows:

> A system and method for providing an interactive, visual complement to one or more audio programs. In one aspect, the system comprises an audio subsystem for generating an audio signal corresponding to a sound recording. The system also comprises a video subsystem for generating a video image specification based, at least in part, on the sound recording. In one aspect, the audio signal and video image specification are transmitted to an audio/video signal transmission system. The transmission system receives the video image specification and generates a video signal that conforms to the video image specification. The video signal and the audio signal are transmitted to at least one consumer receiver. In this way, the system provides a visual complement to an audio program.

20. U.S. Patent No. 9,357,245 (the ñô245 Patentò), entitled ñSystem And Method For Providing An Interactive, Visual Complement To An Audio Program,ò was duly and lawfully issued by the U.S. Patent and Trademark Office on May 31, 2016. A true and correct copy of the ô245 Patent is attached as Exhibit B.

21. The ô245 Patent lists David J. DelBeccaro, Stuart H. Farber, Kelley L. Giannetti, Donna M. Oôneill, Jeremy C. Rosenberg, Robert M. Steinberg, Christina B. Tancredi, and Ronald M. Yurman as inventors.

22. Music Choice is the owner of the ô245 Patent by valid assignment from the inventors. Music Choice owns all rights, title, and interest in the ô245 Patent, including the right to sue for and recover all past, present, and future damages for infringement of the ô245 Patent.

23. The Abstract of the ô245 Patent provides as follows:

> A system and method for providing an interactive, visual complement to one or more audio programs. In one aspect, the system comprises an audio subsystem for generating an audio signal corresponding to a sound recording. The system also comprises a video subsystem for generating a video image specification based, at least in part, on the sound recording. In one aspect, the audio signal and video image specification are transmitted to an audio/video signal transmission system. The transmission system receives the video image specification and generates a video signal that conforms to the video image specification. The video signal and the audio signal are transmitted to at least one consumer receiver. In this way, the system provides a visual complement to an audio program.

24. U.S. Patent No. 7,320,025 (ñthe ô025 Patentò), entitled ñSystems And Methods For Providing A Broadcast Entertainment Service And An On-Demand Entertainment Service,ò was duly and lawfully issued by the U.S. Patent and Trademark Office on January 15, 2008. A true and correct copy of the ô025 Patent is attached as Exhibit C.

25. The ô025 Patent lists Robert M. Steinberg, Ronald M. Yurman, Jeremy C. Rosenberg, Daniel L. McGonigal, John Feras, David J. DelBeccaro, and Stuart H. Farber as inventors.

26. Music Choice is the owner of the ô025 Patent by valid assignment from the inventors. Music Choice owns all rights, title, and interest in the ô025 Patent, including the right to sue for and recover all past, present, and future damages for infringement of the ô025 Patent.

27. The Abstract of the ô025 Patent provides as follows: ñThe present invention provides systems and methods for, in some cases, supplementing a broadcast media service with an on-demand and personalized media service.ò

28. U.S. Patent No. 9,351,045 (the ñô045 Patentò), entitled ñSystems And Methods For Providing A Broadcast Entertainment Service And An On-Demand Entertainment Service,ò was duly and lawfully issued by the U.S. Patent and Trademark Office on May 24, 2016. A true and correct copy of the ô045 Patent is attached as Exhibit D.

29. The ô045 Patent lists Robert M. Steinberg, Ronald M. Yurman, Jeremy C. Rosenberg, Daniel L. McGonigal, John Feras, David J. DelBeccaro, and Stuart H. Farber as inventors.

30. Music Choice is the owner of the ô045 Patent by valid assignment from the inventors. Music Choice owns all rights, title, and interest in the ô045 Patent, including the right to sue for and recover all past, present, and future damages for infringement of the ô045 Patent.

31. The Abstract of the ô045 Patent provides as follows: ñThe present invention provides systems and methods for, in some cases, supplementing a broadcast media service with an on-demand and personalized media service.ò

32. U.S. Patent No. 9,414,121 (ñthe ô121 Patentò), entitled ñSystems And Methods For Providing An On-Demand Entertainment Service,ò was duly and lawfully issued by the U.S. Patent and Trademark Office on August 9, 2016. A true and correct copy of the ô121 Patent is attached as Exhibit E.

33. The ô121 Patent lists Stuart H. Farber, Ronald M. Yurman, Jeremy C. Rosenberg, Robert M. Steinberg, John J. Feras Jr., Daniel L. McGonigal, Donna M. OôNeill, Christina B. Tancredi, and David J. Del Beccaro as inventors.

34. Music Choice is the owner of the ô121 Patent by valid assignment from the inventors. Music Choice owns all rights, title, and interest in the ô121 Patent, including the right to sue for and recover all past, present, and future damages for infringement of the ô121 Patent.

35. The Abstract of the ô121 Patent provides as follows: ñThe present invention provides systems and methods for, in some cases, supplementing a broadcast media service with an on-demand service.ò

STINGRAY'S INFRINGING CONDUCT

36. Stingray owns, operates, and is otherwise responsible for the Stingray Music System/Method that provides digital audio music channels and music videos on demand through, without limitation, cable operator, satellite, Internet Protocol (IP) television (IPTV), mobile, broadband, ñover the topò/OTT and/or website platforms, such as AT&Tôs U-Verse® service. The accused Stingray Music System/Method is made, used, sold and/or offered for sale in the United States, and/or imported into the United States, by defendant Stingray, by Service Providers of the Stingray Music System/Method, and by subscribers/end-users of the Stingray Music System/Method.

37. Beginning in 2006, Music Choice established a relationship with AT&T to provide Music Choice products and services on the AT&T U-Verse® service. The first agreement with AT&T concluded in 2007. During the period from fall 2010 through early 2011, Music Choice and AT&T negotiated a new agreement for AT&Tôs carriage of Music Choiceôs products and services on the AT&T U-Verse® service through December 2013, which agreement was subsequently renewed/extended.

38. In the 2010-2011 time period, Music Choice became aware that Stingray was trying to displace Music Choice as the provider of digital audio music channels and music videos

on demand on AT&T's U-Verse® service. At that time, it appeared that the Stingray product offering was an inferior product that lacked the enhanced functionality enabled by technology designed, developed, and patented by Music Choice. While Music Choice was successful in gaining AT&T's business, as a consequence of the very aggressive pricing offered by Stingray to AT&T, Music Choice was forced to lower its subscriber rates and to enter into a short term agreement. Music Choice sought to negotiate a longer term arrangement with AT&T to extend beyond December 2013, but was not able to reach agreement with AT&T on terms, and only executed two renewals to extend the term of the current agreement through first, February 28, 2014, and then subsequently through February 28, 2015.

39. Prior to the December 2013 contract expiration with AT&T and subsequent extension, Stingray expressed an interest in acquiring Music Choice. In 2010, Music Choice learned that Stingray was focused on entering the U.S. market. Stingray's expansion plans appeared, initially, to involve acquisition of an already going concern in the U.S. that would provide Stingray with access to an existing music service and the technology, rights, affiliates and subscribers necessary to penetrate and operate in the U.S. market. Throughout the period from 2011 to 2015, Stingray had repeated contacts with Music Choice, as well as with Music Choice's partners, and MVPDs and affiliates that Music Choice had contracts with, about its interest in acquiring Music Choice.

40. As part of its expressions of interest to acquire Music Choice, Stingray repeatedly sought access to Music Choice's confidential business and financial information, including its agreements with MVPDs and affiliates, Music Choice's proprietary technology, and its portfolio of issued patents and pending applications. In May 2013, Stingray and Music Choice executed a Confidentiality Agreement, as well as a subsequent letter agreement in June 2013, pursuant to

which Stingray was provided access to much of the documentation and information it sought. In addition to reviewing Music Choiceôs confidential documents, Stingray personnel and their representatives inspected Music Choiceôs facilities in Horsham, Pennsylvania and in New York City, and conducted interviews of Music Choice personnel.

41. After having access to Music Choiceôs confidential and proprietary technical documents and information, business and financial documents and information, and issued patents and pending applications, Stingray, in the fall of 2014, launched, as part of AT&Tôs U-Verse® services, an improved digital audio music and video on demand system and service that included the features and functionality infringing Music Choiceôs patents ï features and functionality that Music Choice had not previously observed in Stingrayôs product offering prior to Stingrayôs access to the information it obtained from Music Choice.

42. In October 2014, Music Choice was informed that AT&T was eliminating Music Choice on AT&Tôs U-Verse® service effective March 1, 2015, and that Music Choiceôs service would effectively be replaced with the infringing Stingray Music System/Method carried by AT&T.

43. In addition to the infringing Stingray Music System/Method provided on the AT&T U-Verse® service, Stingray announced, in May 2016, that it will expand its partnership with Comcast to also provide the Stingray Music System/Method to Comcast Xfinity customers. In connection with the announcement, the senior vice president of marketing and communications for Stingray told Multichannel News that ñ[t]he ability to curate playlists or access already created playlists on your large screen in your living room is an [*sic*] much better experience compared to digital.ò *See,* R. Thomas Umstead, ñStingray Expands Deal with Comcast,ò Multichannel News (May 2, 2016), available at

http://www.multichannel.com/news/content/stringray-strikes-music-chord-comcast/404616. As explained in further detail below, this functionality, touted by Stingray as providing a ñmuch better experience,ò is believed to be part of the technology developed by Music Choice disclosed and claimed in the Patents-in-Suit.

44. Stingray provides the Stingray Music System/Method to Service Providers and subscribers/end users of the Stingray Music System/Method through Stingrayôs and the Service Providerôs distributed broadcast architecture (*e.g.*, including one or more transmission systems and servers, such as, for example, Stingrayôs UbiquiCAST servers) configured in accordance with each Service Providerôs and Stingrayôs requirements. For some Service Providers, configured UbiquiCAST servers are shipped to the Service Providerôs headends, where they are installed and are used by Stingray, the Service Provider, and its subscribers/end-users to provide the Stingray Music System/Method through receivers in conjunction with delivered audio and video programming services. For example, Stingrayôs service is installed at Service Providersô headends and provides the Stingray Music System/Method via the Service Providersô TV services to subscribers/end users through receivers. Stingray uploads new content and program scheduling data for the Stingray Music System/Method by a secure virtual private network link to its UbiquiCAST servers. Such updates are automatic, and the management of the UbiquiCAST servers is remotely controlled by Stingray. Stingray further provides twenty-four hour, seven days a week help and support for its UbiquiCAST servers.

45. Stingray also provides the Stingray Music System/Method to Service Providers and subscribers/end users via one or more applications that are installed in client devices. These applications are used by Stingray, the Service Providers, and the subscribers/end-users to provide the Stingray Music System/Method through receivers to deliver audio and video programming

services. For example, Stingrayôs Stingray Music app is installed in AT&T set top-boxes and provides the Stingray Music System/Method via AT&Tôs U-Verse® TV services to subscribers/end users through receivers.

46. Stingray has contractual relationships with partner Service Providers, such as, for example, AT&T and the National Cable Television Cooperative (NCTC) regarding the operation and use of the Stingray Music System/Method. *See, e.g.*, Exhibits F-H. Through these contractual relationships, Stingray and its partner Service Providers form a joint enterprise in provisioning and/or performing the Stingray Music System/Method to which Stingray has at least an equal voice. Moreover, through, for example, these contractual relationships and the Stingray software applications and services provided, Stingray directs and controls the manner and timing of a Service Providerôs provisioning or performance of the Stingray Music System/Method, and conditions a Service Providerôs receipt of benefits or participation in the Stingray Music System/Method by configuring, installing, and programming servers and other equipment of the Service provider, including, *e.g.,* Stingrayôs UbiquiCAST servers at a Service Providerôs headends, and by configuring, installing, and programming Stingrayôs applications at a Service Providerôs licensed client devices.

47. Stingray also has contractual relationships with subscribers/end users regarding the terms and conditions for operation and use of the Stingray Music System/Method. *See, e.g.*, Exhibit I. Through, for example, these contractual relationships and Stingrayôs software applications and services provided, Stingray directs and controls aspects of the manner and timing of a subscriberôs/end userôs use or performance of the Stingray Music System/Method, and conditions a subscriberôs/end userôs receipt of benefits or participation in the Stingray Music

System/Method by configuring, installing, and programming Stingrayôs applications available through client devices.

48. Service Providers, such as AT&T, have contractual relationships with subscribers/end users regarding the terms and conditions for operation and use of the Stingray Music System/Method. *See, e.g.*, Exhibit J. Moreover, through, for example, these contractual relationships and Stingrayôs software applications and services provided, the Service Provider directs and controls aspects of the manner and timing of a subscriberôs/end userôs use or performance of the Stingray Music System/Method, and conditions a subscriberôs/end userôs receipt of benefits or participation in the Stingray Music System/Method by configuring, installing, and programming Stingrayôs applications available through client devices.

49. The Stingray Music System/Method infringes, literally and/or under the doctrine of equivalents, at least claims 1 and 8 of the ó602 Patent; claims 1, 12 and 17 of the ó245 Patent; claims 1 and 8 of the ó025 Patent; claims 1, 6, 11, and 16 of the ó045 Patent; and claims 1, 6, and 14 of the ô121 Patent, as explained in detail below.

50. Stingray makes, uses, sells and/or offers for sale in the United States, and/or imports into the United States, the infringing Stingray Music System/Method.

51. Stingray and one or more Service Providers jointly make, use, sell, and/or offer for sale the infringing Stingray Music System/Method. For example, (i) Stingray and one or more Service Providers form a joint enterprise in provisioning and/or performing the Stingray Music System/Method to which Stingray has at least an equal voice, and/or (ii) Stingray directs and controls the manner and timing of a Service Providerôs provisioning or performance of the Stingray Music System/Method, and conditions a Service Providerôs receipt of benefits or participation in the Stingray Music System/Method. *See, e.g.*, Exhibits F-H.

52. Service Providers and one or more subscribers/end-users jointly use the infringing Stingray Music Method. For example, the Service Provider controls the manner and timing of a subscriberôs/end-userôs performance of the Stingray Music Method, and conditions a subscriberôs/end-userôs receipt of benefits or participation in the Stingray Music Method. *See, e.g.*, Exhibit J.

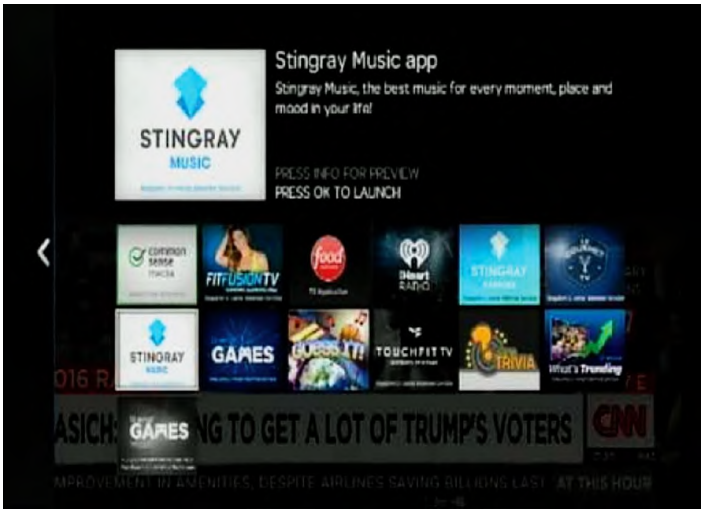
53. Stingray has induced and continues to induce one or more parties, such as Service Providers and/or subscribers/end-users, individually or jointly, to make, use, sell, and/or offer for sale the infringing Stingray Music System/Method, knowing that such actions constituted infringement of one or more of the Patents-in-Suit. Stingray enters into affiliate agreements with Service Providers and provides technical and marketing information to Service Providers in order to promote and encourage the infringing acts described in detail below. Stingray and/or the Service Providers further provide user guides to subscribers/end-users to promote and encourage the infringing acts described in detail below. *See, e.g.*, Exhibits K-L. At least as early as 2013, when Stingray became aware of Music Choiceôs issued patents and pending applications in connection with Stingrayôs expressions of interest to acquire Music Choice, Stingray was aware of one or more of the Patents-in-Suit and had knowledge that its Stingray Music Method/System would be infringed by the patented features.

54. Stingray has and continues to make, use, sell and/or offer for sale in the United States, and/or import into the United States, the infringing Stingray Music System/Method despite an objectively high likelihood that its actions constituted infringement of one or more the Patents-in-Suit. This objectively-defined risk of infringement was known or so obvious that it should have been known to Stingray. Moreover, Stingray has had actual knowledge of its infringement, as well as the infringement by Service Providers and subscribers/end-users as a

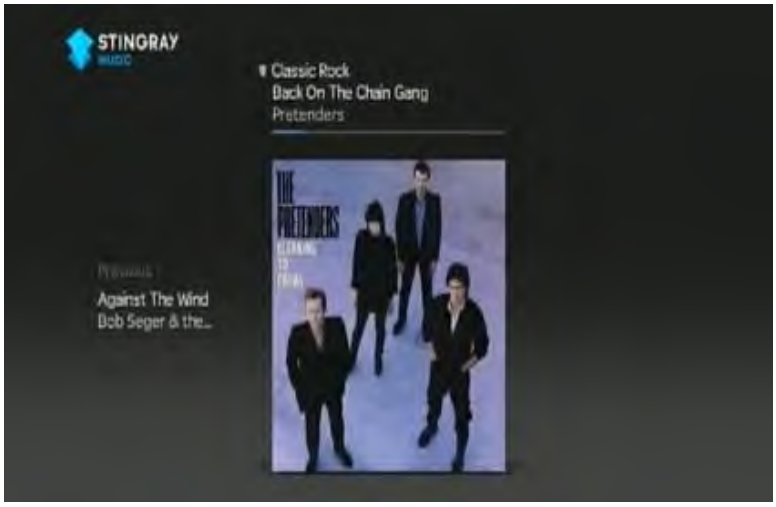
result of their making, using, selling, and/or offering for sale of the Stingray Music System/Method since at least the filing and serving of Music Choiceôs original complaint for patent infringement on June 6, 2016.

U.S. Patent No. 8,769,602

55. Stingray has used and continues to use the Stingray Music Method in a manner that infringes, literally and/or under the doctrine of equivalents, at least claim 1 of the ô602 Patent. Specifically, through the Stingray Music Method, Stingray directly, and/or in conjunction with one or more parties, performs a method of providing a visual complement to an audio stream (*e.g.*, the Stingray Music app on AT&Tôs U-Verse® platform and/or the Stingray service on other Service Providerôs platforms provides a song title, artist name, and/or album cover image as a visual complement to a song).



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56. The Stingray Music Method transmits, from a first transmission system (*e.g.*, the Stingray distribution architecture and/or the Stingray UbiquiCAST music content origin server) to a second transmission system (*e.g.*, the AT&T U-Verse® system or other Service Provider system), audio data corresponding to a sound recording (*e.g.*, audio data corresponding to the sound recording ñBack on the Chain Gangò).

57. The Stingray Music Method transmits a data packet (*e.g.*, an HTML or XML document) including a video image specification (*e.g.*, a specification of a thumbnail cover art image to be displayed in a video image associated with the sound recording ñBack on the Chain Gangò) while the audio data (*e.g.*, audio data corresponding to the sound recording ñBack on the Chain Gangò) is being transmitted, wherein the video image specification specifies one or more media asset identifiers, each of which identifies one or more media assets, one or more of the media asset identifiers identifying a media asset associated with the sound recording (*e.g.*, an identifier of a thumbnail cover art image), the data packet further including sound recording information associated with the sound recording, the sound recording information including one or more of the title of the sound recording (*e.g.*, ñBack on the Chain Gangò) and the name of the artist who recorded the sound recording (*e.g.*, the ñPretendersò).

58. The Stingray Music Method transmits the data packet (*e.g.*, the HTML or XML document) to a system (*e.g.*, a device running the Stingray Music app and/or the Stingray service) including a video image generator, wherein the video image generator is configured to generate a video image (*e.g.*, a video image including the song title ñBack on the Chain Gang,ò the artist name ñPretenders,ò and the associated cover art image) using the video image specification and the system is configured to provide the generated video image (*e.g.*, the video image including the song title ñBack on the Chain Gang,ò the artist name ñPretenders,ò and the associated cover art image) to a device that is operable to display the video image to a user of the device.

59. The video image generator (*e.g.*, the device running the Stingray Music app and/or Stingray service) is configured to generate the video image (*e.g.*, the video image including the song title ñBack on the Chain Gang,ò the artist name ñPretenders,ò and the associated cover art image) by retrieving the media assets (*e.g.*, the thumbnail cover art image associated with the sound recording ñBack on the Chain Gangò) identified in the video image specification.

60. Stingray has used and continues to use the Stingray Music System in a manner that infringes, literally and/or under the doctrine of equivalents, at least claim 8 of the ô602 Patent. Stingray puts the invention of claim 8 of the ô602 Patent into service, *i.e.*, by controlling the Stingray Music System as a whole and obtaining benefit from it. Specifically, through the Stingray Music System, Stingray directly, and/or in conjunction with one or more parties, provides a system for providing a visual complement (*e.g.*, providing a song title, artist name, and/or album cover image as a visual complement to a song) to an audio service (*e.g.*, the

streaming music channels available using the Stingray music service for one or more Service Providers).

61. The Stingray Music System includes a music content origin server (*i.e.*, the Stingray UbiquiCAST server), which includes an audio subsystem configured to store a playlist (*e.g.*, a playlist including the sound recording ñBack on the Chain Gangò) for an audio channel (*e.g.*, a classic rock audio channel) of the audio service (*e.g.*, the Stingray service).

62. The Stingray content origin server (*i.e.*, the Stingray UbiquiCASTserver) of the Stingray Music System includes a first transmission system. The Stingray Music System also includes a second transmission system (*e.g.*, a Service Provider system). The first transmission system is configured to transmit to the second transmission system audio data corresponding to a sound recording (*e.g.*, audio data corresponding to a sound recording for the song ñBack on the Chain Gangò) specified in the playlist (*e.g.*, the playlist for the classic rock linear audio channel).

63. The Stingray Music System includes a video image generator (*e.g.*, a device running the Stingray service).

64. In the Stingray Music System, the video image generator (*e.g.*, the device running the Stingray service) is configured to i) receive, while the sound recording (*e.g.*, the sound recording for the song ñBack on the Chain Gangò) is being transmitted, a video image specification (*e.g.*, a specification of a thumbnail cover art image, sound recording title, and recording artist name to be displayed in a video image associated with the sound recording ñBack on the Chain Gangò) that specifies one or more media asset identifiers (*e.g.*, an identifier of a thumbnail cover art image) that identify one or more media assets (*e.g.*, a thumbnail cover art image for the song ñBack on the Chain Gangò). The one or more media assets (*e.g.*, the thumbnail cover art image for the song ñBack on the Chain Gangò) are associated with the sound

recording (*e.g.*, the sound recording for the song ñBack on the Chain Gangò) that is being transmitted. The video image specification (*e.g.*, the specification of a thumbnail cover art image, sound recording title, and recording artist name to be displayed in a video image associated with the sound recording ñBack on the Chain Gangò) also specifies sound recording information associated with the sound recording, the sound recording information comprising one or more of the title of the sound recording (*e.g.*, ñBack on the Chain Gangò) and the name of the artist (*e.g.*, the ñPretendersò) who recorded the sound recording.

65. In the Stingray Music System, the video image generator (*e.g.*, the device running the Stingray service) is configured to generate a video image using the media assets identified in the video image specification (*e.g.*, the video image including the song title ñBack on the Chain Gang,ò the artist name ñPretenders,ò and the specified associated cover art image).

66. In the Stingray Music System, the first transmission system (*e.g.*, the Stingray UbiquiCAST music content origin server) is further configured to transmit to the second transmission system (*e.g.*, a Service Provider system) the generated video image (*e.g.*, the video image including the song title ñBack on the Chain Gang,ò the artist name ñPretenders,ò and the associated cover art image) multiplexed with the audio data corresponding to the sound recording (*e.g.*, the audio data corresponding to the sound recording ñBack on the Chain Gangò).

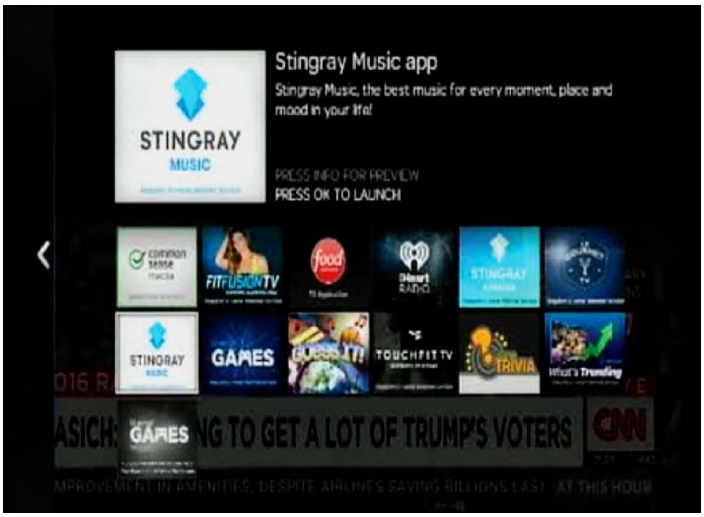
67. The Stingray Music Content origin server (*i.e.*, the Stingray UbiquiCAST server) of the Stingray Music System includes a video subsystem.

68. In the Stingray Music System, the audio subsystem of the Stingray Music Content origin server (*i.e.*, the Stingray UbiquiCAST server) is configured to i) retrieve the audio data corresponding to the sound recording (*e.g.*, the audio data corresponding to the sound recording ñBack on the Chain Gangò) prior to the first transmission system of the Stingray Music Content

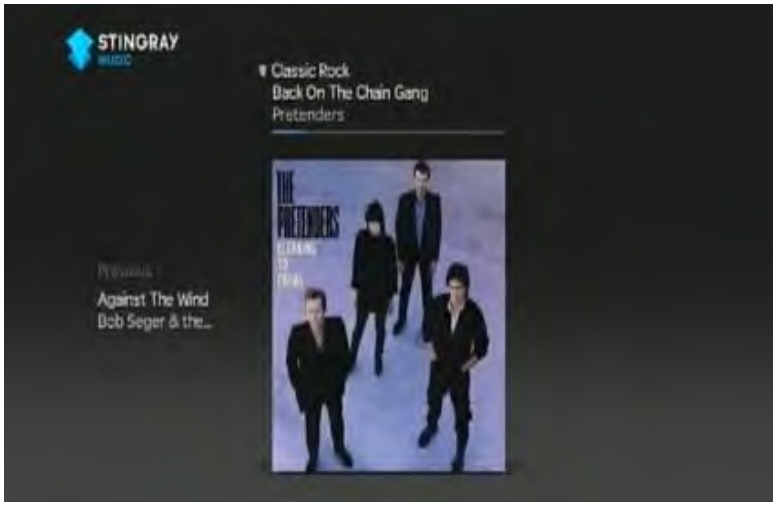
origin server transmitting said audio data and ii) provide to the video subsystem of the Stingray Music Content origin server a trigger message comprising an identifier associated with said sound recording (*e.g.*, an identifier associated with the sound recording ñBack on the Chain Gangò).

U.S. Patent No. 9,357,245

69. Stingray has used and continues to use the Stingray Music Method in a manner that infringes, literally and/or under the doctrine of equivalents, at least claim 1 of the ô245 Patent. Specifically, through the Stingray Music Method, Stingray directly, and/or in conjunction with one or more parties, performs a method for providing a visual complement to an audio stream (*e.g.*, the Stingray Music app on AT&Tôs U-Verse® platform and/or the Stingray service on other Service Provider platforms provides a song title, artist name, and/or album cover image as a visual complement to a song).



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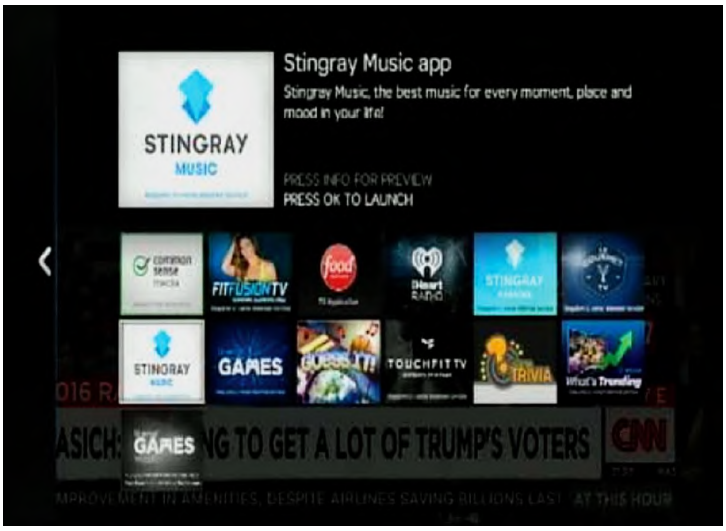
70. The Stingray Music Method transmits, from a first transmission system (*e.g.*, a Stingray Music Content origin server) to a second transmission system (*e.g.*, the AT&T U-Verse® and/or other Service Provider system), audio data corresponding to a selected song.

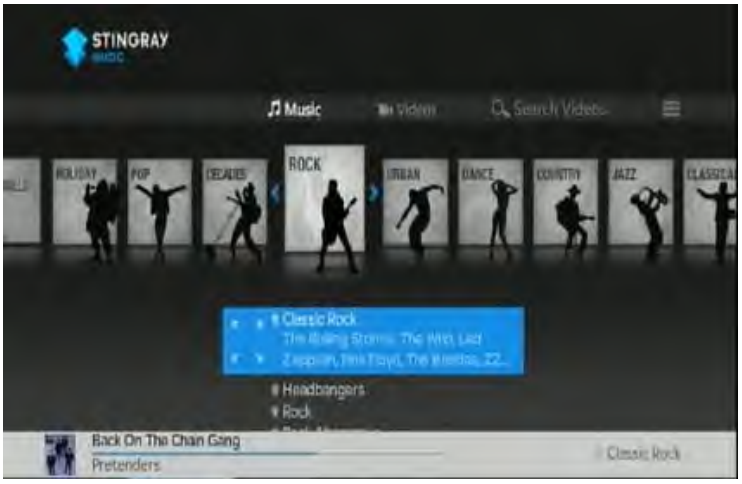
71. The Stingray Music Method transmits a data packet (*e.g.*, an HTML or XML document) that was generated using an identifier identifying the selected song (*e.g.*, the song ñBack on the Chain Gangò), wherein the data packet includes a media asset identifier identifying a media asset (*e.g.*, a thumbnail cover art image for the song ñBack on the Chain Gangò) and further includes song information associated with the selected song (*e.g.*, ñBack on the Chain Gangò), the song information comprising the title of the song and the name of the artist who recorded the song (*e.g.*, the ñPretendersò).

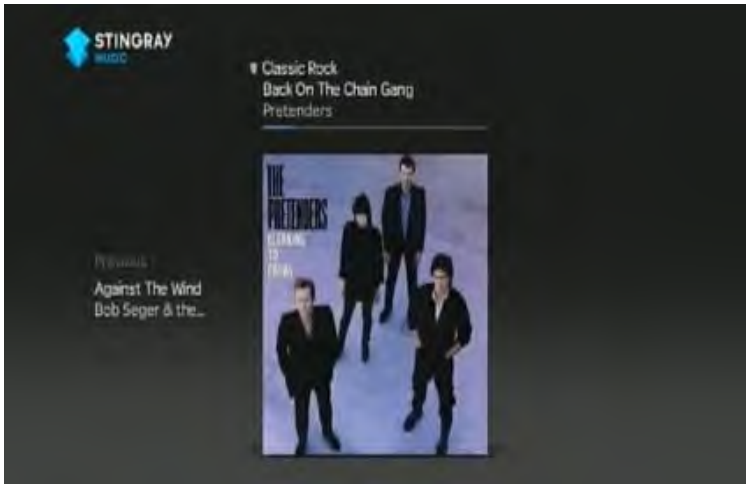
72. The Stingray Music Method transmits the data packet (*e.g.*, the HTML or XML document) to a receiving system (*e.g.*, a device running the Stingray Music app and/or Stingray service) that is configured such that, in response to receiving the data packet, the receiving system automatically generates a video image (*e.g.*, a video image including the song title ñBack on the Chain Gang,ò the artist name ñPretenders,ò and the associated cover art image) using the information included in the data packet and automatically outputs the generated video image

(*e.g.*, the video image including the song title ñBack on the Chain Gang,ò the artist name ñPretenders,ò and the associated cover art image) such that it is received by a display device that is operable to display the video image to a user of the display device without the user having to select a menu item. The generated video image (*e.g.*, the video image including the song title ñBack on the Chain Gang,ò the artist name ñPretenders,ò and the associated cover art image) includes the song information comprising the title of the song (*e.g.*, ñBack on the Chain Gangò) and the name of the artist (*e.g.*, ñPretendersò).

73. Stingray has made and/or used and continues to make and/or use the Stingray Music System in a manner that infringes, literally and/or under the doctrine of equivalents, at least claim 12 of the ô245 Patent. Stingray puts the invention of claim 12 of the ô245 Patent into service, i.e., by controlling the Stingray Music System as a whole and obtaining benefit from it. Specifically, through the Stingray Music System, Stingray directly, and/or in conjunction with one or more parties, provides a system for providing a visual complement (*e.g.*, providing a song title, artist name, and/or album cover image as a visual complement to a song) to an audio service (*e.g.*, the streaming music channels available using the Stingray Music app on AT&T U-Verse® and/or the Stingray service on other Service Providers).







74. The Stingray Music System provides access to streaming linear audio channels and includes an audio transmission system configured to transmit audio data corresponding to a sound recording specified in a playlist for a linear audio channel.

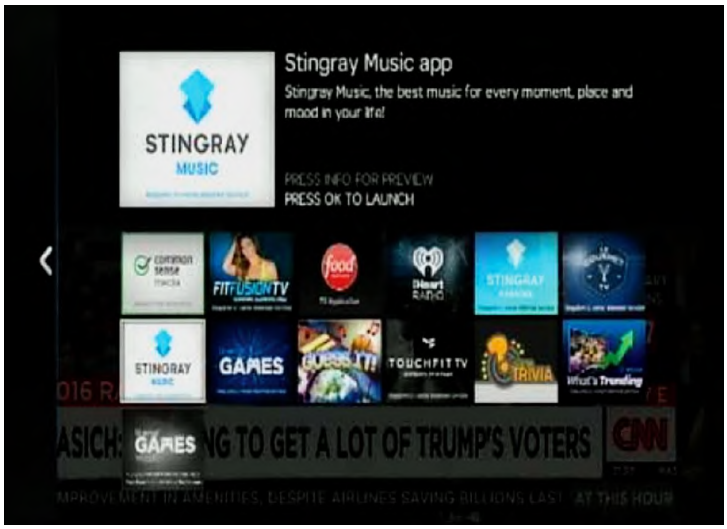
75. The Stingray Music System includes a receiving system (*e.g.*, a device running the Stingray Music app and/or Stingray service) that includes a receiver and a video image generator. In the Stingray Music System, the receiving system (*e.g.*, the device running the Stingray Music app and/or Stingray service) is configured to i) in response to receiving a data packet (*e.g.*, an HTML or XML document) that was generated using an identifier identifying the sound recording (*e.g.*, the sound recording for the song ñBack on the Chain Gangò), generate a

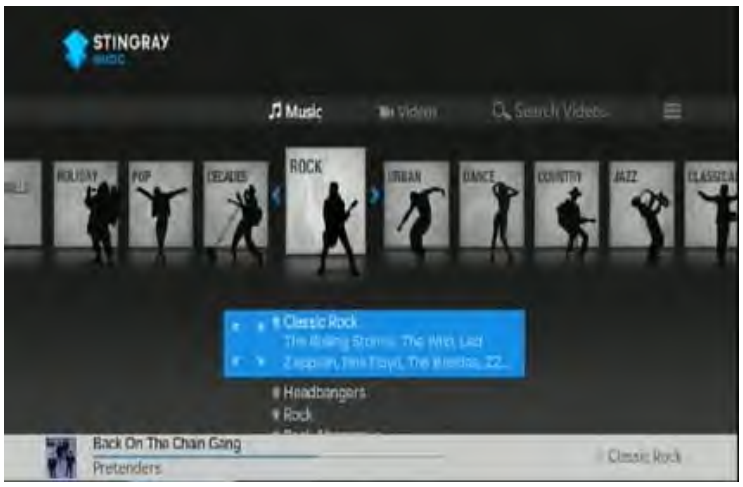
video image (*e.g.*, a video image including the song title ñBack on the Chain Gang,ò the artist name ñPretenders,ò and the associated cover art image) in accordance with information included in the data packet. The data packet includes a media asset identifier identifying a media asset (*e.g.*, a thumbnail cover art image for the song ñBack on the Chain Gangò) and further includes sound recording information associated with the sound recording, the sound recording information comprising the title of the sound recording (*e.g.*, ñBack on the Chain Gangò) and the name of the artist (*e.g.*, the ñPretendersò) who recorded the sound recording.

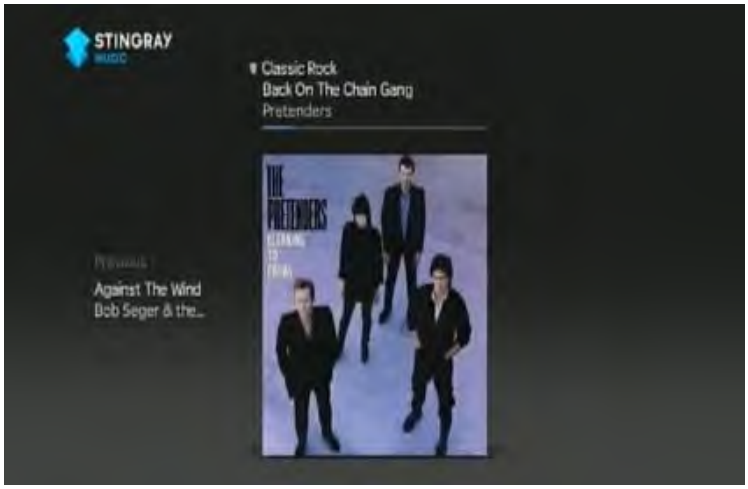
76. In the Stingray Music System, the receiving system (*e.g.*, the device running the Stingray Music app and/or Stingray service) is configured to ii) automatically output the generated video image such that it is received at a display device operable to display the video image (*e.g.*, the video image including the song title ñBack on the Chain Gang,ò the artist name ñPretenders,ò and the associated cover art image) to a user of the display device without the user having to select a menu item. In the Stingray Music System, the generated video image (*e.g.*, the video image including the song title ñBack on the Chain Gang,ò the artist name ñPretenders,ò and the associated cover art image) output by the receiving system (*e.g.*, the device running the Stingray Music app) includes the song information comprising the title of the song (*e.g.*, ñBack on the Chain Gangò) and the name of the artist (*e.g.*, ñPretendersò).

77. In the Stingray Music System, the receiving system (*e.g.*, the device running the Stingray Music app and/or Stingray service) is configured to retrieve the identified media asset (*e.g.*, the thumbnail cover art image for the song ñBack on the Chain Gangò) and use the retrieved media asset in generating the video image (*e.g.*, the video image including the song title ñBack on the Chain Gang,ò the artist name ñPretenders,ò and the associated cover art image).

78. Stingray has used and continues to use the Stingray Music Method in a manner that also infringes, literally and/or under the doctrine of equivalents, at least claim 17 of the '245 Patent. Specifically, through the Stingray Music Method, Stingray directly, and/or in conjunction with one or more parties, performs a method for providing a visual complement to an audio stream (*e.g.*, providing a song title, artist name, and/or album cover image as a visual complement to an audio stream for a song).







79. The Stingray Music System, which performs the Stingray Music Method, is a music multicast system for providing the audio stream to a plurality of users essentially simultaneously. The Stingray Music Method automatically selects a song (*e.g.*, a song ñBack on the Chain Gangò) from a set of available songs (*e.g.*, a set of songs for a classic rock audio channel). The Stingray Music Method generates a data packet (*e.g.*, an HTML or XML document) based on the selected song (*e.g.*, the song ñBack on the Chain Gangò), the data packet including a media asset identifier identifying a media asset (*e.g.*, a thumbnail cover art image for the song ñBack on the Chain Gangò) and further including song information associated with the selected song (*e.g.*, the song ñBack on the Chain Gangò), the song information comprising the title of the song (*e.g.*, ñBack on the Chain Gangò) and the name of the artist who recorded the song (*e.g.*, the ñPretendersò).

80. The Stingray Music System includes a first transmission system (*e.g.*, the Stingray Music Content origin server) and a second transmission system (*e.g.*, the AT&T U-Verse® system or other Service Provider system). The Stingray Music Method, as a result of automatically selecting the song, transmits, from the first transmission system to the second

transmission system, the audio stream that consists of audio data corresponding to the selected song (*e.g.*, audio data for the song ñBack on the Chain Gangò).

81. The Stingray Music Method transmits the data packet (*e.g.*, the HTML or XML document) to a receiving system (*e.g.*, a device running the Stingray Music app and/or Stingray service). In the Stingray Music Method, the receiving system (*e.g.*, the device running the Stingray Music app and/or Stingray service) is configured such that, in response to receiving the data packet (*e.g.*, the HTML or XML document), the receiving system automatically generates a video image (*e.g.*, a video image including the song title ñBack on the Chain Gang,ò the artist name ñPretenders,ò and the associated cover art image) using the information included in the data packet and automatically outputs the generated video image such that it is received by a display device that is operable to display the video image (*e.g.*, the video image including the song title ñBack on the Chain Gang,ò the artist name ñPretenders,ò and the associated cover art image) to a user of the display device without the user having to select a menu item.

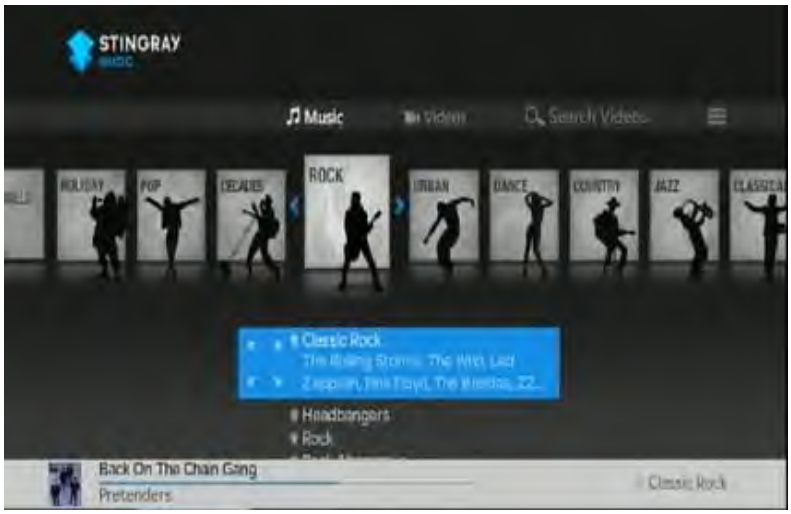
82. In the Stingray Music Method, the generated video image (*e.g.*, the video image including the song title ñBack on the Chain Gang,ò the artist name ñPretenders,ò and the associated cover art image) output by the receiving system (*e.g.*, the device running the Stingray Music app and/or Stingray service) includes the song information including the title of the song (*e.g.*, ñBack on the Chain Gangò) and the name of the artist (*e.g.*, ñPretendersò) and the still image identified by the media asset identifier (*e.g.*, the associated cover art image).

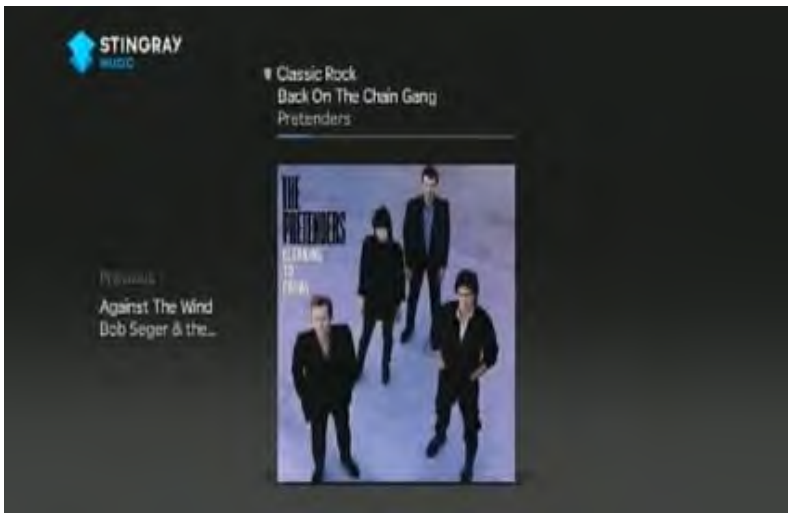
U.S. Patent No. 7,320,025

83. Stingray actively encourages one or more parties to use the Stingray Music Method in a manner that infringes, literally and/or under the doctrine of equivalents, at least claim 1 of the ô025 Patent. Specifically, through the Stingray Music Method, Stingray induces

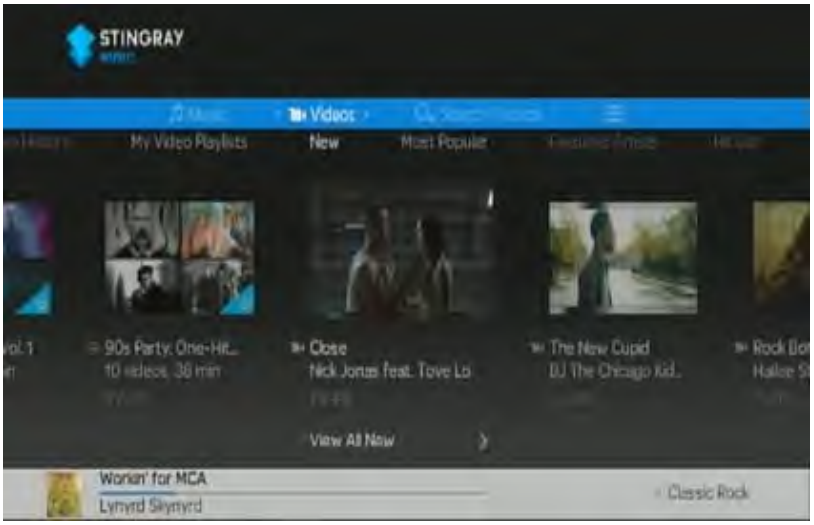
one or more parties (*e.g.*, AT&T and/or AT&T in conjunction with subscribers/end-users) to perform a method.

84. The Stingray Music Method configures a client system (*e.g.*, a device running the Stingray Music app) to receive and play music (*e.g.*, the song ñBack on the Chain Gangò or ñWorkinô for MCAò) broadcast from a broadcast media source (*e.g.*, the server system operated by Stingray alone or in conjunction with AT&T U-Verse®) through a broadcast channel (*e.g.*, the ñClassic Rockò channel).

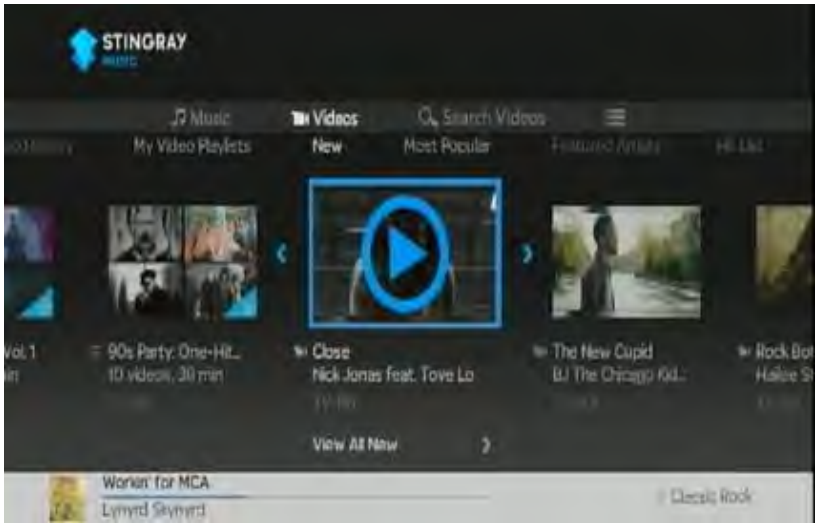




85. The Stingray Music Method configures the client system (*e.g.*, the device running the Stingray Music app) to receive application data that includes a video identifier identifying a video (*e.g.*, an identifier of a music video for the song ñCloseò). The application data is transmitted with the broadcast music (*e.g.*, the song ñBack on the Chain Gangò or ñWorkinô for MCAò).



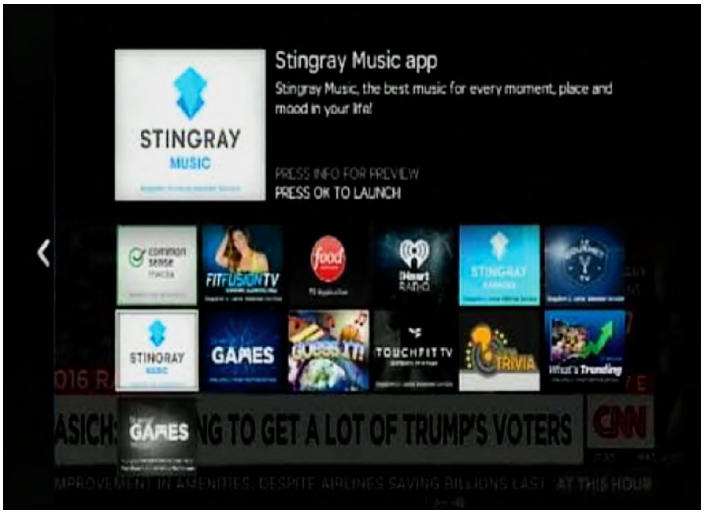
86. The Stingray Music Method, while the client system (*e.g.*, the device running the Stingray Music app) is playing the broadcast music (*e.g.*, the song ñWorkinô for MCAò), (a) enables a user of the client system to indicate that the user desires to view the video (*e.g.*, the music video for the song ñCloseò) and (b) receives an indication that the user desires to view the video (*e.g.*, the music video for the song ñCloseò).

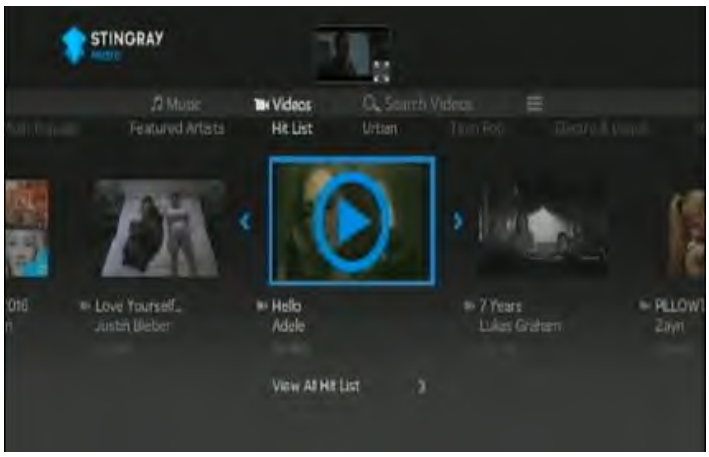


87. The Stingray Music Method, in response to receiving the indication (*e.g.*, the indication that the user desires to view the music video for the song ñCloseò), automatically ceases the playing of the broadcast music (*e.g.*, the song ñWorkinô for MCAò), transmits from the client system (*e.g.*, the device running the Stingray Music app) to an on-demand system (*e.g.*, one or more servers) the received video identifier (*e.g.*, the identifier of the music video for the song ñCloseò), and establishes an on-demand session between the on-demand system and the client system.

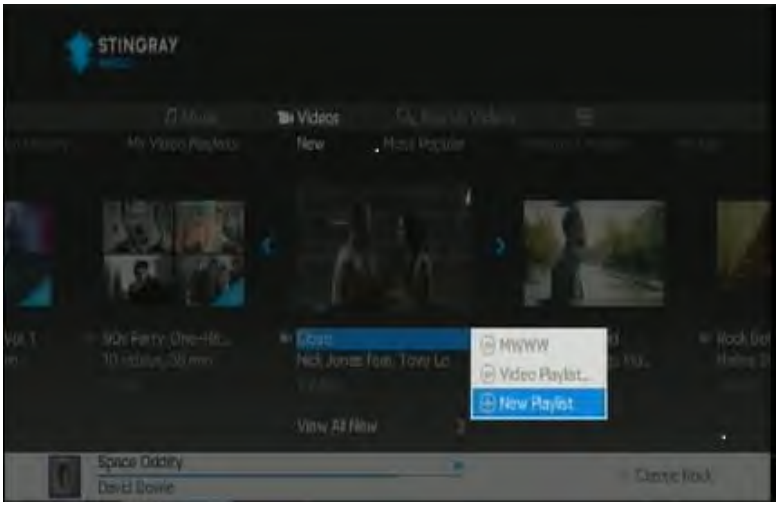
88. The Stingray Music Method, after establishing the on-demand session, transmits from the on-demand system (*e.g.*, one or more servers) to the client system (*e.g.*, the device running the Stingray Music app) the identified video (*e.g.*, the music video for the song ñCloseò), receives the transmitted video at the client system, and automatically plays the received video in response to receiving the transmitted video from the on-demand system.

89. Stingray has used and continues to use the Stingray Music Method in a manner that infringes, literally and/or under the doctrine of equivalents, at least claim 8 of the ô025 Patent. Specifically, through the Stingray Music Method, Stingray directly, and/or in conjunction with one or more parties, performs a video on demand method.

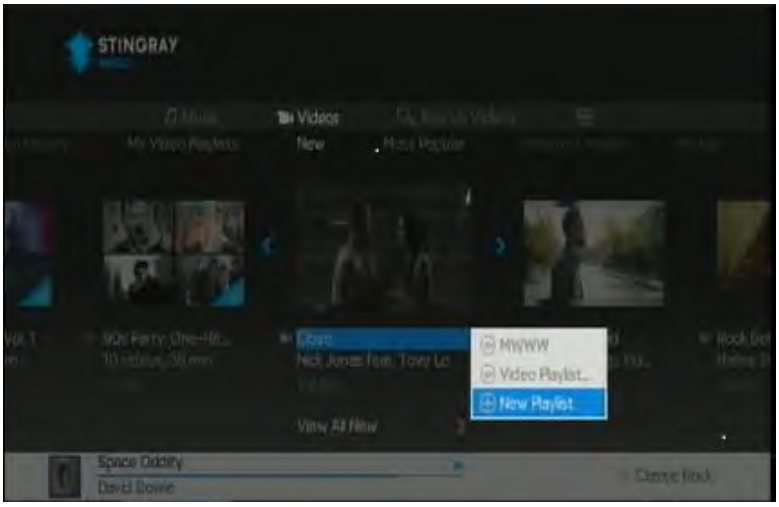


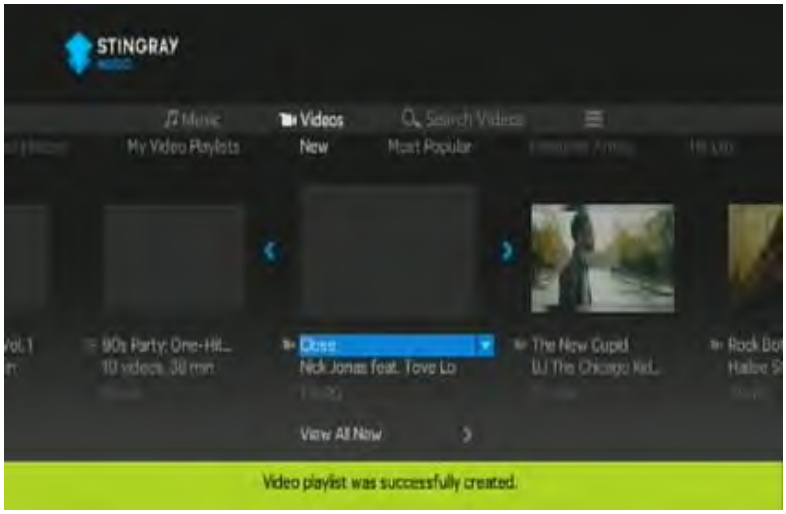


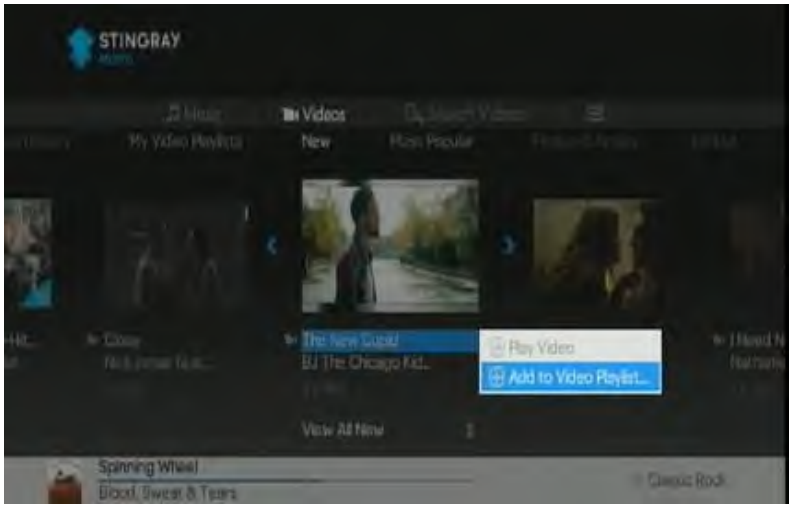
90. The Stingray Music Method receives, at an on-demand system, information indicating that a user desires to view a selected video (*e.g.*, information indicating that a user desires to view a selected music video for the song entitled ñCloseò in the form of information indicating that the user desires to create a playlist the music video for the song entitled ñCloseò).

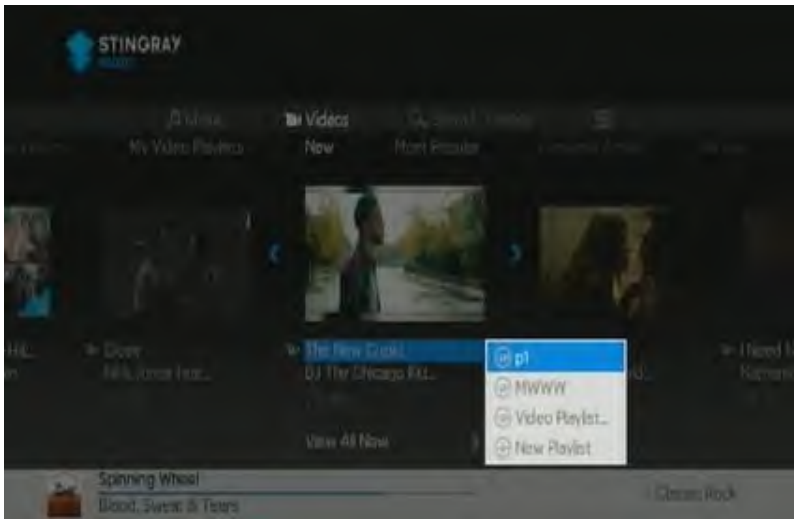


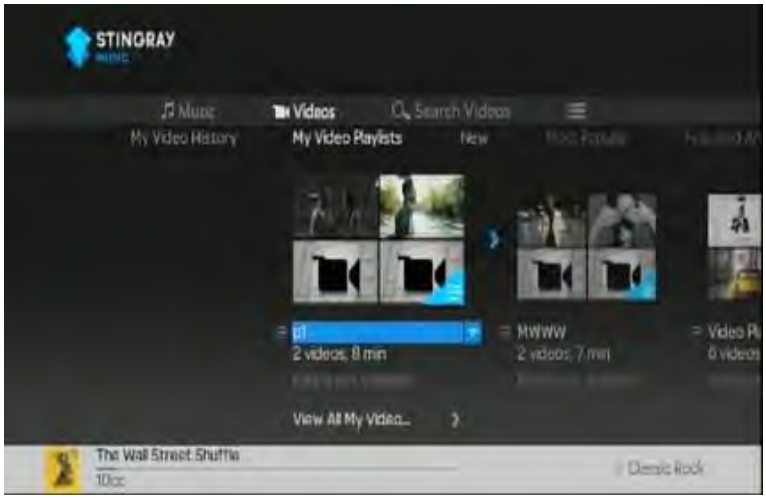
91. The Stingray Music Method creates a playlist (*e.g.*, a playlist entitled ñp1ò). The playlist includes a plurality of media assets (*e.g.*, music videos for songs entitled ñCloseò and ñThe New Cupidò), which include one media asset corresponding to the selected video (*e.g.*, the music video for the song entitled ñCloseò).

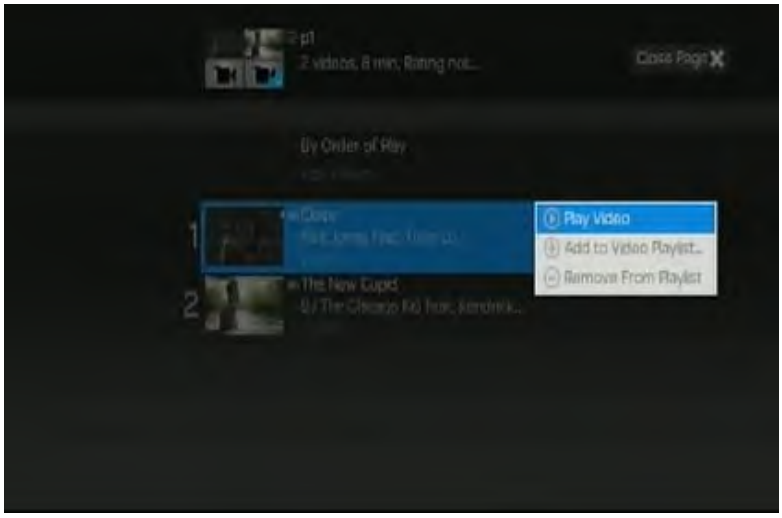



STINGRAY
Videos
My Video Playlists
New
Most Popular
View All New
Video playlist was successfully created.

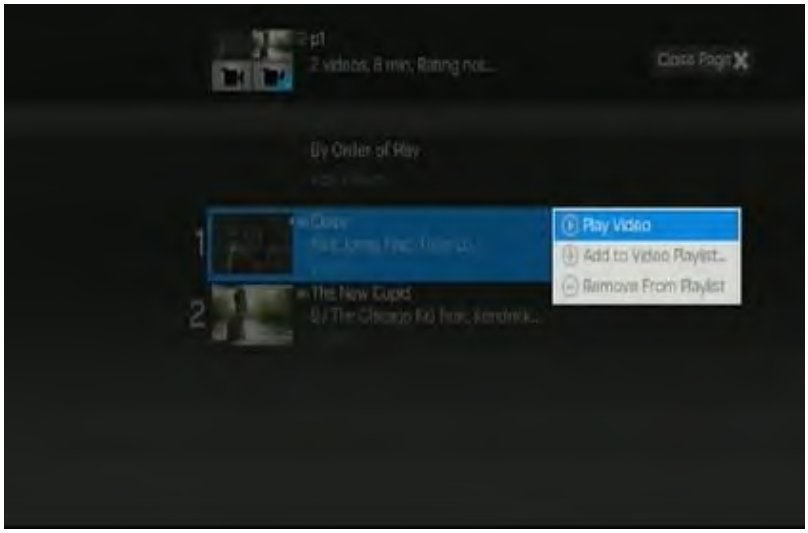

STINGRAY
Videos
New
Play Video
Add to Video Playlist...
View All New
Spinning Wheel
Blood, Sweat & Tears

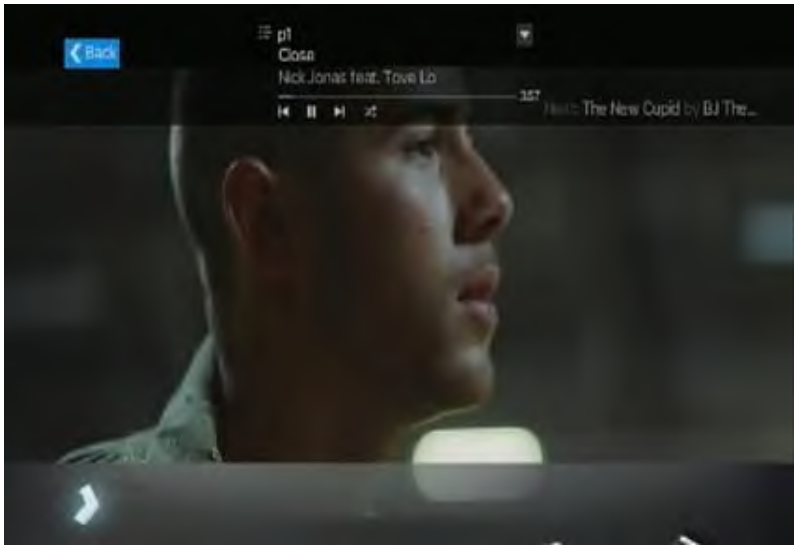

STINGRAY
Videos
New
p1
MWWW
Video Playlist...
New Playlist
View All New
Spinning Wheel
Blood, Sweat & Tears



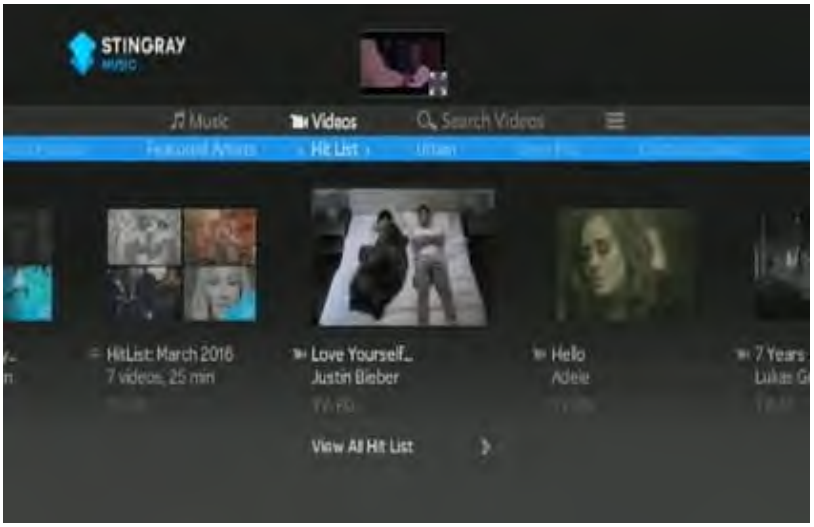


92. The Stingray Music Method transmits to a client system (*e.g.*, a device running the Stingray Music app) a media asset (*e.g.*, the music video for the song entitled ñCloseò) listed in the playlist (*e.g.*, the playlist entitled ñp1ò).

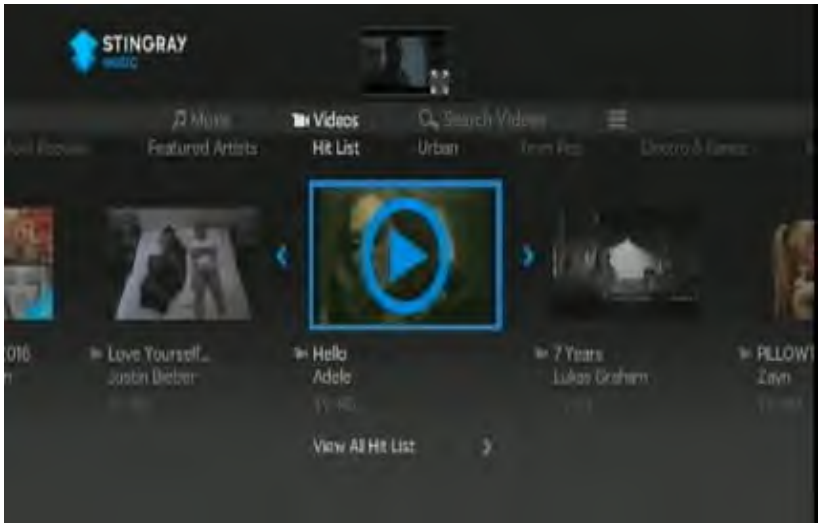




93. The Stingray Music Method transmits to the client system (*e.g.*, the device running the Stingray Music app) a video identifier (*e.g.*, a thumbnail identifying a music video for the song entitled ñHelloò) while transmitting to the client system the media asset (*e.g.*, the music video for the song entitled ñClose,ò which continues to play at the top center of the Stingray Music app screen).



94. While the client system (*e.g.*, the device running the Stingray Music app) is playing the media asset (*e.g.*, the music video for the song entitled ñClose,ò which plays at the top center of the Stingray Music app screen), the Stingray Music Method (a) enables a user of the client system to indicate that that the user desires to view the video identified by the video identifier (*e.g.*, the music video for the song entitled ñHelloò) and (b) receives an indication that the user desires to view the video (*e.g.*, the music video for the song entitled ñHelloò).



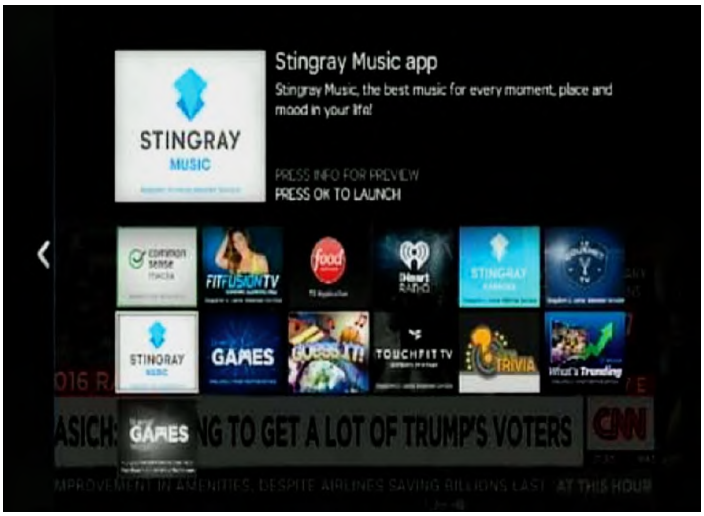
95. The Stingray Music Method receives from the client system a message including the video identifier (*e.g.*, the video identifier for the music video for the song entitled ñHelloò).

The message is received while at least a portion of the media asset is being transmitted to the client system (*e.g.*, while at least a portion of the music video for the song entitled ñCloseò plays at the top center of the Stingray Music app screen).

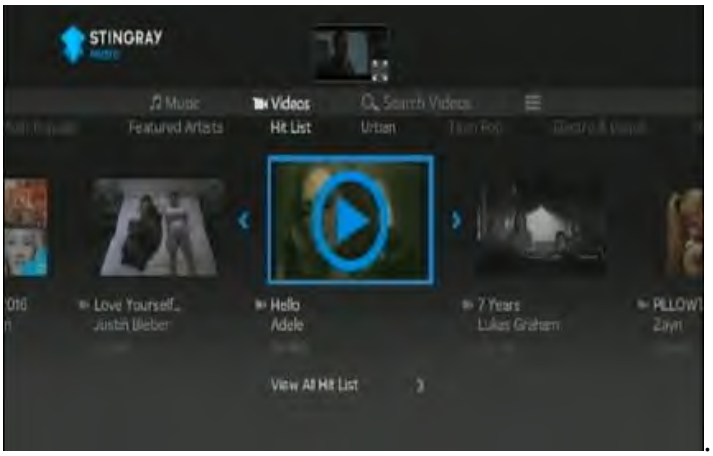
96. The Stingray Music Method, in response to receiving the message from the client system (*e.g.*, the device running the Stingray Music app), ceases transmitting the media asset (*e.g.*, the music video for the song entitled ñCloseò) and transmits the video identified by the video identifier (*e.g.*, the music video for the song entitled ñHelloò).

U.S. Patent No. 9,351,045

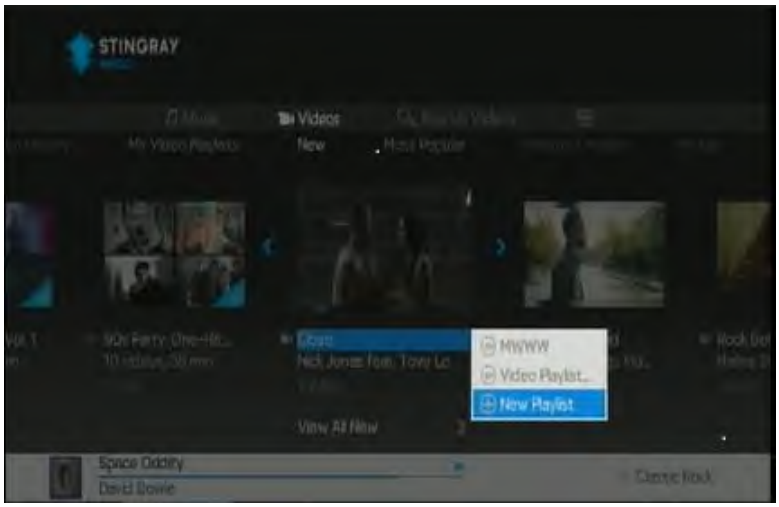
97. Stingray has used and continues to use the Stingray Music Method in a manner that infringes, literally and/or under the doctrine of equivalents, at least claim 1 of the ô045 Patent. Specifically, through the Stingray Music Method, Stingray directly, and/or in conjunction with one or more parties, performs a video-on-demand method.

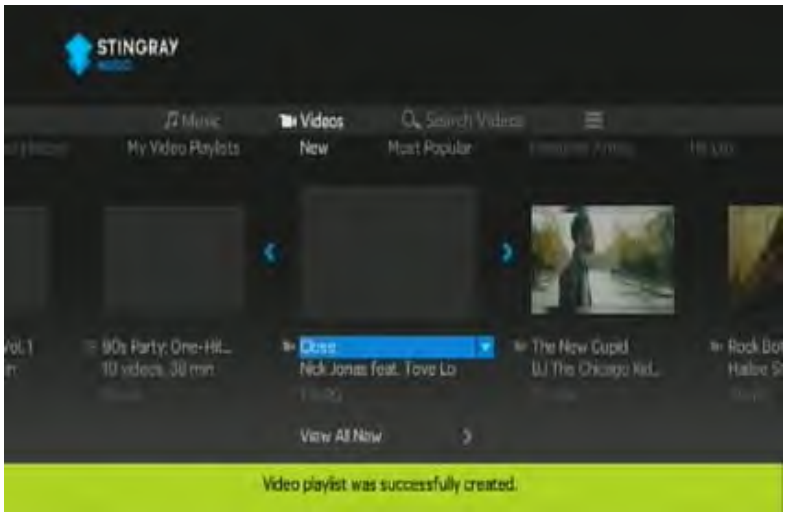


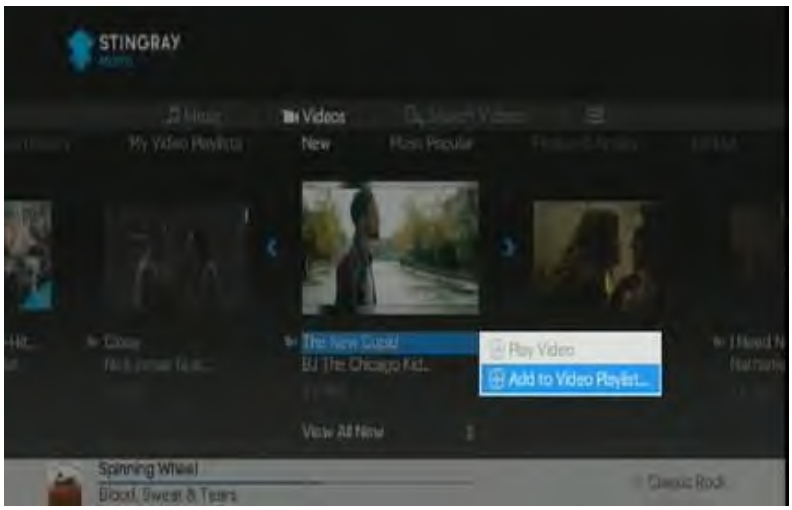
MC-EGLA-000282

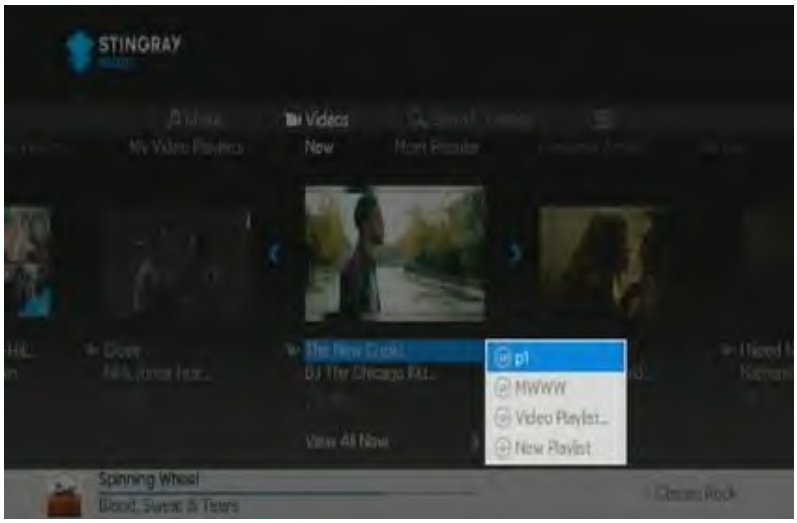


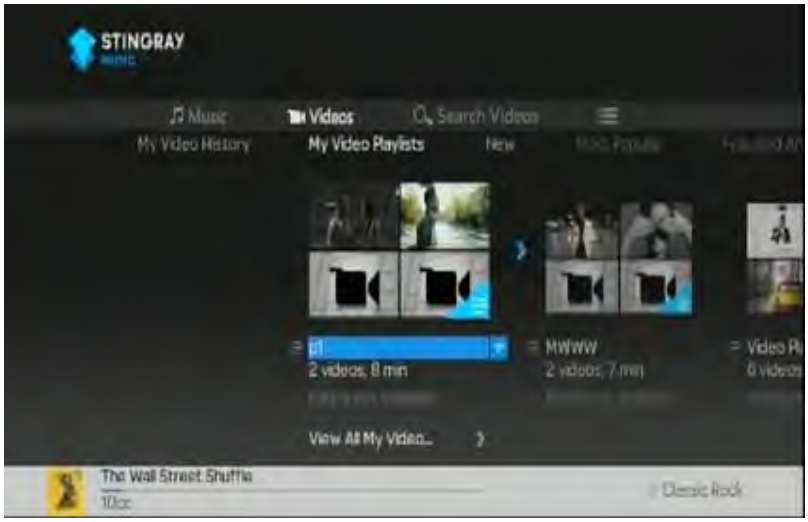
98. The Stingray Music Method creates a playlist (*e.g.*, a playlist entitled ñp1ò). The playlist comprises a set of media asset identifiers (*e.g.*, song names identifying music videos for songs entitled ñCloseò and ñThe New Cupidò) selected by a user of a client system (*e.g.*, the device running the Stingray Music app). Each media asset identifier included in the set of media asset identifiers identifies a media asset (*e.g.*, each of the song names in the playlist entitled ñp1ò identifies a music video for a song entitled ñCloseò or ñThe New Cupidò).



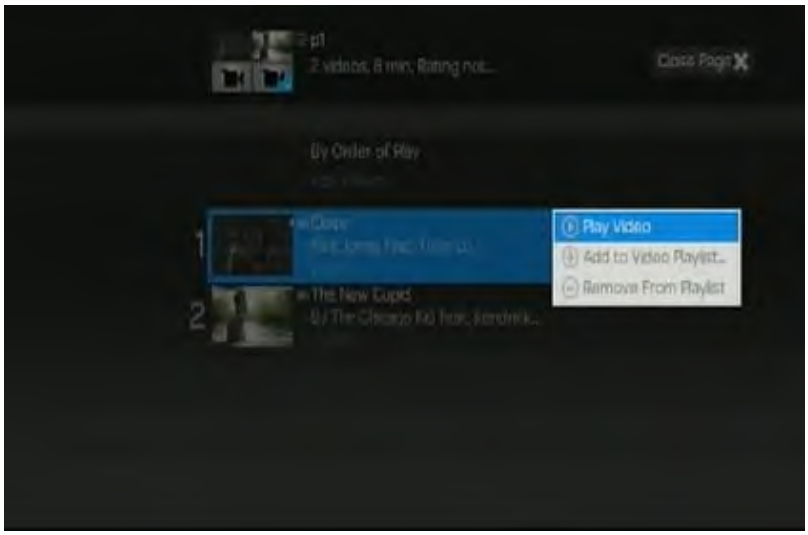

STINGRAY
Videos
My Video Playlists
New
Most Popular
90s Party: One-Hit...
10 videos, 38 min
Close
Nick Jonas feat. Tove Lo
The New Cupid
DJ The Chicago Kid...
View All New
Video playlist was successfully created.


STINGRAY
Videos
New
Play Video
Add to Video Playlist...
View All New
Spinning Wheel
Blood, Sweat & Tears

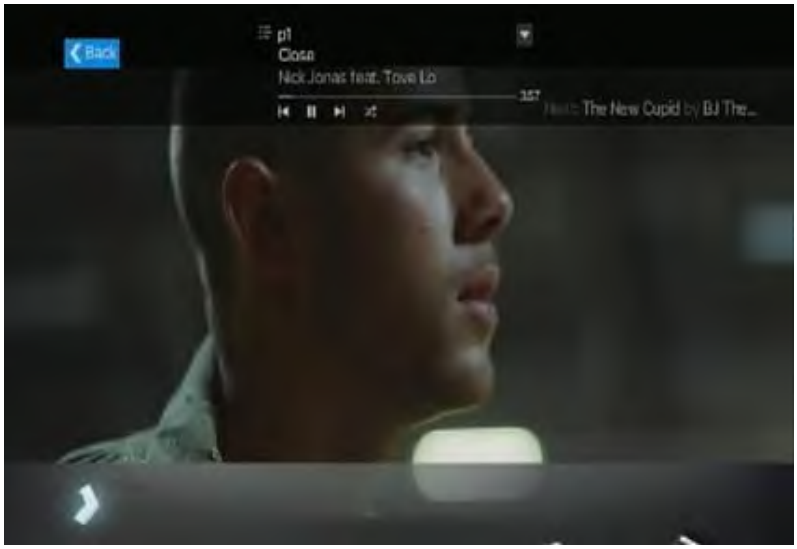

STINGRAY
Videos
New
p1
MWW
Video Playlist...
New Playlist
Spinning Wheel
Blood, Sweat & Tears



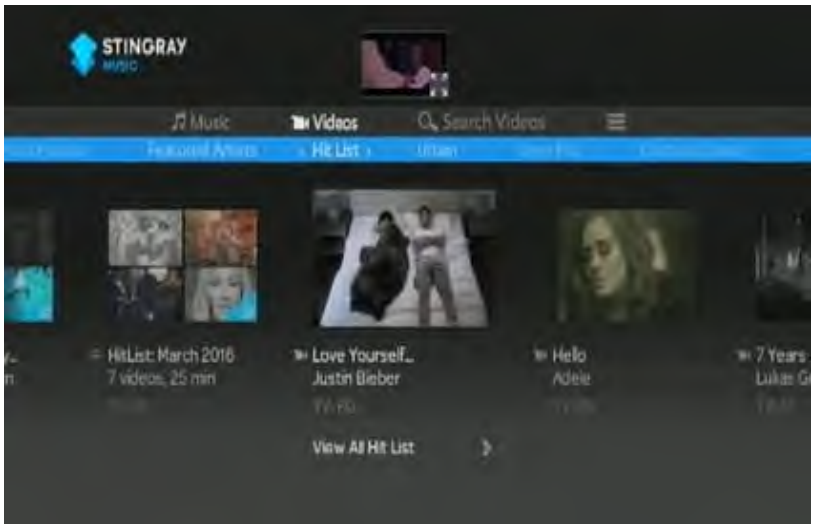
99. The Stingray Music Method receives information transmitted by the client system (*e.g.*, the device running the Stingray Music app). The received information indicates that a user of the client system desires to view a media asset (*e.g.*, the music video for the song entitled ñCloseò) identified by a media asset identifier (*e.g.*, the song name identifying a music video for the song entitled ñCloseò) included in the playlist (*e.g.*, the playlist entitled ñp1ò).



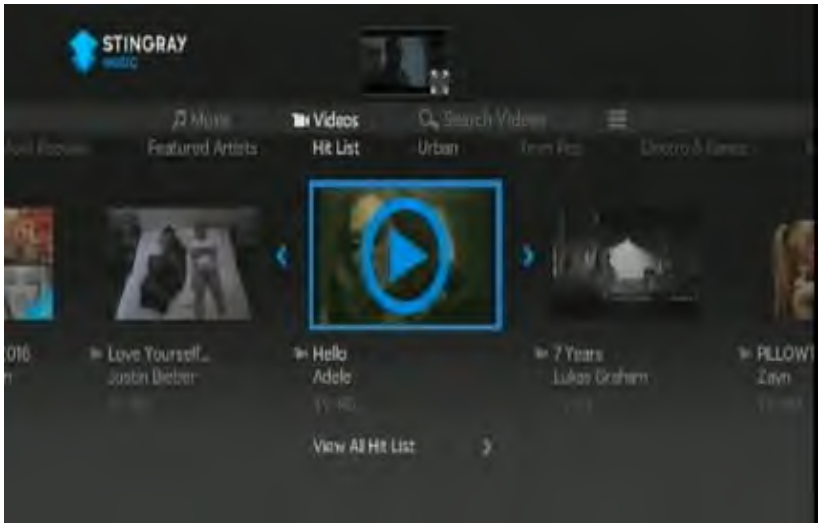
100. The Stingray Music Method, in response to receiving the information, transmits to the client system (*e.g.*, the device running the Stingray Music app) the media asset desired by the user (*e.g.*, the music video for the song entitled ñCloseò).



101. The Stingray Music Method transmits to the client system (*e.g.*, the device running the Stingray Music app) a video identifier (*e.g.*, a thumbnail identifying a music video for the song entitled ñHelloò) while transmitting to the client system the desired media asset (*e.g.*, the music video for the song entitled ñClose,ò which continues to play at the top center of the Stingray Music app screen), the video identifier identifying a video (*e.g.*, the music video for the song entitled ñHelloò).



102. The Stingray Music Method, while the client system (*e.g.*, the device running the Stingray Music app) is playing the desired media asset (*e.g.*, the music video for the song entitled ñClose,ò which plays at the top center of the Stingray Music app screen), (a) enables the user of the client system to indicate that the user desires to view the video identified by the video identifier (*e.g.*, the music video for the song entitled ñHelloò) and then (b) receives from the client system a message comprising information indicating that the user desires to view the video identified by the video identifier (*e.g.*, the music video for the song entitled ñHelloò). The message is received while at least a portion of the media asset is being transmitted to the client system (*e.g.*, while at least a portion of the music video for the song entitled ñCloseò plays at the top center of the Stingray Music app screen).



103. The Stingray Music Method, in response to receiving the message from the client system (*e.g.*, the device running the Stingray Music app), ceases transmitting to the client system the media asset (*e.g.*, the music video for the song entitled ñCloseò) and transmits to the client system video data corresponding to the video identified by the video identifier (*e.g.*, video data corresponding to the music video for the song entitled ñHelloò).



104. Stingray has made and/or used and continues to make and/or use the Stingray Music System in a manner that also infringes, literally and/or under the doctrine of equivalents, at least claim 6 of the õ045 Patent. Stingray puts the invention of claim 6 of the õ045 Patent into service, *i.e.*, by controlling the Stingray Music System as a whole and obtaining benefit from it. Specifically, through the Stingray Music System, Stingray directly, and/or in conjunction with one or more parties, provides a video-on-demand system.

105. The Stingray Music System includes and/or uses a transmitter.

106. The Stingray Music System includes and/or uses a receiver.

107. The Stingray Music System includes and/or uses a computer system coupled to the transmitter and the receiver, and the computer system is configured to perform a method, as described below.

108. The computer system of the Stingray Music System creates a playlist (*e.g.*, a playlist entitled ñp1ò). The playlist comprises a set of media asset identifiers (*e.g.*, media asset identifiers identifying music videos for songs entitled ñCloseò and ñThe New Cupidò) selected

by a user of a client system (*e.g.*, a device running the Stingray Music app). Each media asset identifier included in the set of media asset identifiers identifies a media asset (*e.g.*, each of the song names in the playlist entitled ñp1ò identifies a music video for a song entitled ñCloseò or ñThe New Cupidò).

109. The computer system of the Stingray Music System, in response to receiving from the client system (*e.g.*, the device running the Stingray Music app) information indicating that a user of the client system desires to view a media asset (*e.g.*, the music video for the song entitled ñCloseò) identified by a media asset identifier (*e.g.*, the song name identifying the music video for the song entitled ñCloseò) included in the playlist (*e.g.*, the playlist entitled ñp1ò), transmits to the client system the media asset desired by the user (*e.g.*, the music video for the song entitled ñCloseò).

110. The computer system of the Stingray Music System transmits to the client system (*e.g.*, the device running the Stingray Music app) a video identifier (*e.g.*, a thumbnail identifying a music video for the song entitled ñHelloò) while transmitting to the client system the desired media asset (*e.g.,* the music video for the song entitled ñClose,ò which continues to play at the top center of the Stingray Music app screen), the video identifier identifying a video (*e.g.*, the music video for the song entitled ñHelloò).

111. The computer system of the Stingray Music System, while the client system (*e.g.*, the device running the Stingray Music app) is playing the desired media asset (*e.g.*, the music video for the song entitled ñClose,ò which plays at the top center of the Stingray Music app screen), (a) enables the user of the client system to indicate that the user desires to view the video identified by the video identifier (*e.g.*, the music video for the song entitled ñHelloò).

112. The computer system of the Stingray Music System then (b) in response to receiving from the client system (*e.g.*, the device running the Stingray Music app) a message comprising information indicating that the user desires to view the video identified by the video identifier (*e.g.*, the music video for the song entitled ñHelloò), ceases transmitting to the client system the media asset (*e.g.*, the music video for the song entitled ñCloseò) and transmits to the client system video data corresponding to the video identified by the video identifier (*e.g.*, video data corresponding to the music video for the song entitled ñHelloò).

113. Stingray has used and continues to use the Stingray Music Method in a manner that also infringes, literally and/or under the doctrine of equivalents, at least claim 11 of the ô045 Patent. Specifically, through the Stingray Music Method, Stingray directly, and/or in conjunction with one or more parties, performs a video-on-demand method. The Stingray Music Method provides access to a plurality of streaming music channels associated with a genre of music.

114. The Stingray Music Method transmits simultaneously to a plurality of client systems (*e.g.*, devices running the Stingray Music app) audio data corresponding to the selected song (*e.g.*, the song ñBack on the Chain Gangò or ñWorkinô for MCAò). Each of the plurality of client systems is configured to use the audio data to play the song (*e.g.*, the song ñBack on the Chain Gangò or ñWorkinô for MCAò) so that each user of each of the plurality of client systems can listen to the song. The plurality of client systems includes a first client system and a second client system (*e.g.*, first and second devices running the Stingray Music app).

115. The Stingray Music Method, while transmitting the audio data (*e.g.*, the audio data for the song ñWorkinô for MCAò) to the plurality of client systems (*e.g.*, the devices running the Stingray Music app), transmits to the first client system (*e.g.*, the first device running the

Stingray Music app) a video identifier identifying a video (*e.g.*, a thumbnail identifying a music video for the song ñCloseò).

116. The Stingray Music Method, while the first client system (*e.g.*, the first device running the Stingray Music app) is playing the song (*e.g.*, the song ñWorkinô for MCAò), (a) enables the user of the first client system to indicate that the user desires to view the video identified by the video identifier (*e.g.*, the music video for the song ñCloseò) and then (b) receives from the first client system a message comprising information indicating that the user desires to view the video identified by the video identifier (*e.g.*, the music video for the song ñCloseò). The message is received while at least a portion of the audio data (*e.g.*, the audio data for the song ñWorkinô for MCAò) is being transmitted to the first client system.

117. The Stingray Music Method, in response to receiving the message from the first client system (*e.g.*, the first device running the Stingray Music app), transmits to the first client system video data corresponding to the video identified by the video identifier (*e.g.*, video data corresponding to the music video for the song ñCloseò).

118. Stingray has made and/or used and continues to make and/or use the Stingray Music System in a manner that infringes, literally and/or under the doctrine of equivalents, at least claim 16 of the ô045 Patent. Stingray puts the invention of claim 16 of the ô045 Patent into service, *i.e.*, by controlling Stingray Music System as a whole and obtaining benefit from it. Specifically, through the Stingray Music System, Stingray directly, and/or in conjunction with one or more parties, provides a video-on-demand system.

119. The Stingray Music System includes and/or uses a transmitter.

120. The Stingray Music System includes and/or uses a receiver.

121. The Stingray Music System includes and/or uses a computer system coupled to the transmitter and the receiver, and the computer system is configured to perform a method, as described below.

122. The computer system of the Stingray Music System selects a song (*e.g.*, the song ñBack on the Chain Gangò or ñWorkinô for MCAò) for one of a plurality of music channels (*e.g.*, the ñClassic Rockò channel). The one of the plurality of music channels (*e.g.*, the ñClassic Rockò channel) is associated with a genre of music (*e.g.*, the classic rock genre).

123. The computer system of the Stingray Music System transmits simultaneously to a plurality of client systems (*e.g.*, devices running the Stingray Music app) audio data corresponding to the selected song (*e.g.*, the song ñBack on the Chain Gangò or ñWorkinô for MCAò). Each of the plurality of client systems is configured to use the audio data to play the song (*e.g.*, the song ñBack on the Chain Gangò or ñWorkinô for MCAò) so that each user of each of the plurality of client systems can listen to the song. The plurality of client systems includes a first client system and a second client system (*e.g.*, first and second devices running the Stingray Music app).

124. The computer system of the Stingray Music System, while transmitting the audio data (*e.g.*, the audio data for the song ñWorkinô for MCAò) to the plurality of client systems (*e.g.*, the devices running the Stingray Music app), transmits to the first client system (*e.g.*, the first device running the Stingray Music app) a video identifier identifying a video (*e.g.*, a thumbnail identifying a music video for the song ñCloseò).

125. The computer system of the Stingray Music System, while the first client system (*e.g.*, the first device running the Stingray Music app) is playing the song (*e.g.*, the song ñWorkinô for MCAò), (a) enables the user of the first client system to indicate that the user

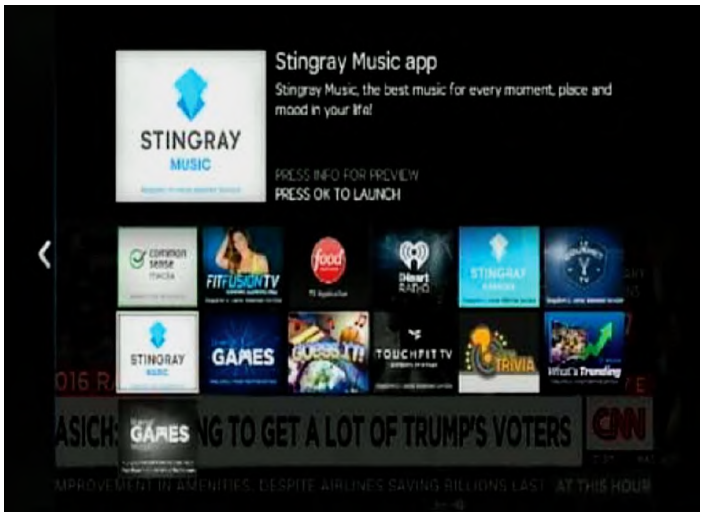
desires to view the video identified by the video identifier (*e.g.*, the music video for the song ñCloseò) and then (b) in response to receiving from the first client system a message comprising information indicating that the user desires to view the video identified by the video identifier (*e.g.*, the music video for the song ñCloseò), transmits to the first client system video data corresponding to the video identified by the video identifier (*e.g.*, video data corresponding to the music video for the song ñCloseò).

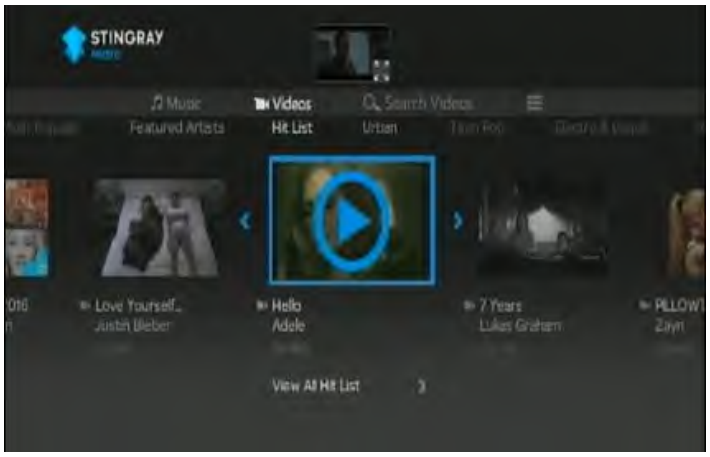
U.S. Patent No. 9,414,121

126. Stingray has used and continues to use the Stingray Music System in a manner that infringes, literally and/or under the doctrine of equivalents, at least claim 1 of the ô121 Patent. Stingray puts the invention of claim 1 of the ô121 Patent into service, *i.e.*, by controlling the Stingray Music System as a whole and obtaining benefit from it. Specifically, through the Stingray Music System, Stingray directly, and/or in conjunction with one or more parties (*e.g.*, AT&T using (i) a one or more servers provided by Stingray and/or AT&T, (ii) the AT&T U-verse® system provided by AT&T, and (iii) a set top box provided by AT&T), provides a system for providing an on-demand, personalized media service and a broadcast service to a set-top-box.

127. Stingray actively encourages one or more parties to make the Stingray Music System in a manner that infringes, literally and/or under the doctrine of equivalents, at least claim 1 of the ô121 Patent. Specifically, Stingray induces one or more parties (*e.g.*, AT&T), to make a system for providing an on-demand, personalized media service and a broadcast service to a set-top-box (*e.g.*, AT&T manufactures (i) one or more servers provided by AT&T and/or Stingray, (ii) the AT&T U-verse® system provided by AT&T, and (iii) a set top box provided by AT&T).

128. Stingray actively encourages one or more parties to use the Stingray Music System in a manner that infringes, literally and/or under the doctrine of equivalents, at least claim 1 of the ‘025 Patent. Specifically, Stingray induces one or more third parties (*e.g.*, subscribers/end-users, AT&T, and/or subscribers/end-users in conjunction with AT&T) to use a system for providing an on-demand, personalized media service and a broadcast service to a set-top-box (*e.g.*, subscribers/end-users, AT&T, and/or subscribers/end-users in conjunction with AT&T use (i) one or more servers provided by AT&T and/or Stingray, (ii) the AT&T U-verse® system provided by AT&T, and (iii) a set top box provided by AT&T).





129. The Stingray Music System includes/uses a distribution network (*e.g.*, AT&Tôs U-verse® distribution network). The set-top-box (*e.g.*, the AT&T set-top-box) is connected to the distribution network.

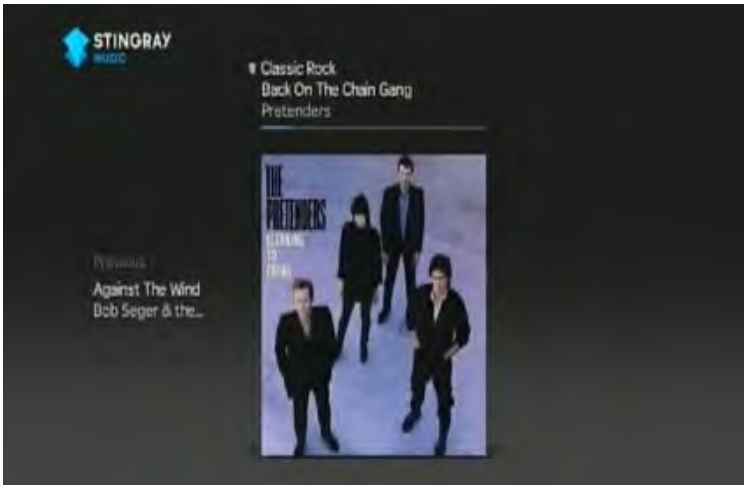
130. The Stingray Music System transmits a plurality of media channels (*e.g.*, the streaming music channels available using the Stingray Music app on AT&T U-verse®).

131. The Stingray Music System includes/uses a distribution system including a transmission system operable to transmit via the distribution network (*e.g.*, AT&Tôs U-verse® distribution network) a media channel (*e.g.*, a ñClassic Rockò media channel) comprising a stream of audio and video data (*e.g.*, audio data for the song ñBack on the Chain Gangò or ñWorkinô for MCAò and video data including song title, artist name, and album art data).

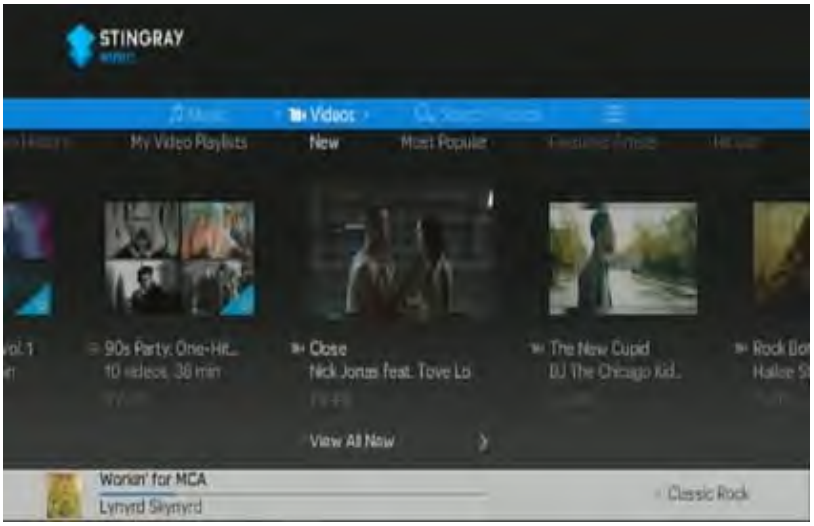
132. In the Stingray Music System, the set-top-box is operable to receive the media channel (*e.g.*, a ñClassic Rockò media channel) via the distribution network.

133. In the Stingray Music System, the set-top-box is operable to reproduce the stream of audio data (*e.g.*, audio data for the song ñBack on the Chain Gangò or ñWorkinô for MCAò) included in the received media channel (*e.g.*, the ñClassic Rockò media channel) for a user of the client system (*e.g.*, the device running the Stingray Music app) to hear.

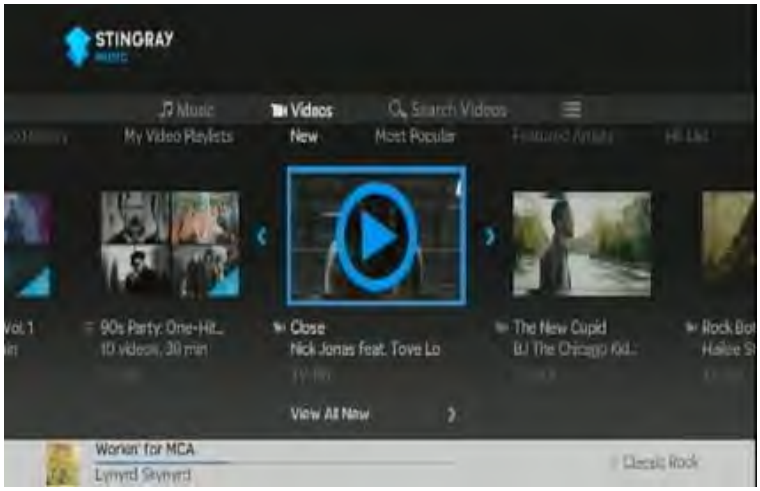
134. In the Stingray Music System, the set-top-box is operable to display video corresponding to the stream of video data (*e.g.*, video corresponding to the song title, artist name, and album art data for the song ñBack on the Chain Gangò or ñWorkinô for MCAò) included in the received media channel (*e.g.*, the ñClassic Rockò media channel) on a display device for the user to see.



135. In the Stingray Music System, the set-top-box is operable to receive via the distribution network video identifier information comprising an identifier (*e.g.*, a thumbnail or title identifying a music video for the song entitled ñCloseò) for identifying an available on-demand video (*e.g.*, the music video for the song entitled ñCloseò) while displaying on the display device the video corresponding to the stream of video data (*e.g.*, the video corresponding to the song title, artist name, and album art data) included in the received media channel (*e.g.*, the ñClassic Rockò media channel).



136. In the Stingray Music System, the set-top-box is operable to display a user selectable element (*e.g.*, a thumbnail image for the music video for the song entitled ñCloseò) for requesting the available on-demand video (*e.g.*, the music video for the song entitled ñCloseò) on the display device so that the user selectable element is displayed on the display device together with at least a portion of the video corresponding to the stream of video data (*e.g.*, video corresponding to the song title, artist name, and album art data for the song ñBack on the Chain Gangò or ñWorkinô for MCAò) as a result of receiving the video identifier information (*e.g.*, the thumbnail or title identifying a music video for the song entitled ñCloseò) transmitted to the set-top-box using the distribution network. The user selectable element (*e.g.*, the thumbnail image for the music video for the song entitled ñCloseò) is associated with the available on-demand video (*e.g.*, the music video for the song entitled ñCloseò).

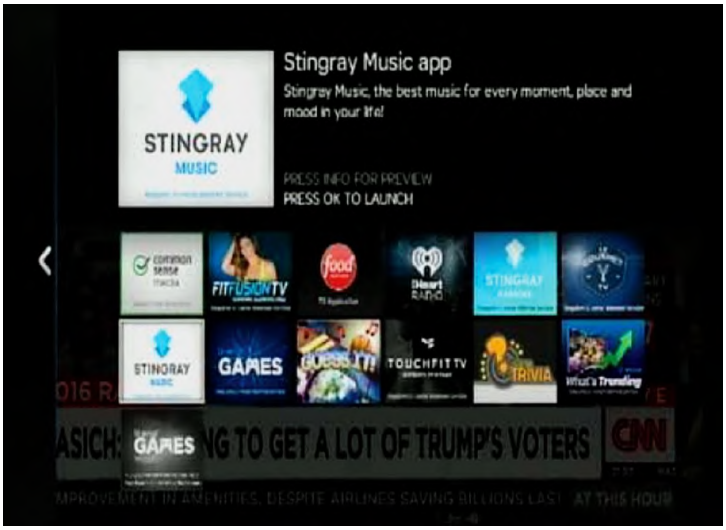


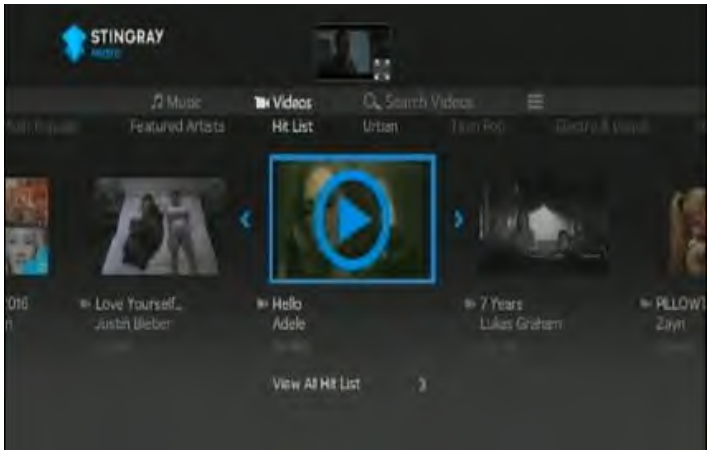
137. In the Stingray Music System, the set-top-box is operable to, in response to the user of the set-top-box selecting the user selectable element (*e.g.*, the thumbnail or title identifying the music video for the song entitled ñCloseò), causing an on-demand video system (*e.g.*, one or more servers) to transmit to the set-top-box the available on-demand video (*e.g.*, the music video for the song entitled ñCloseò) by transmitting to the on-demand video system an on-

demand request message (*e.g.*, a message indicating that the thumbnail or title identifying the music video for the song entitled ñCloseò was selected).



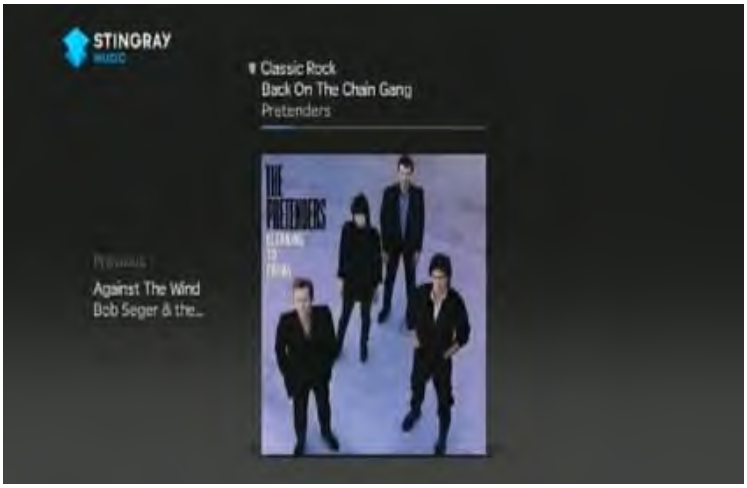
138. Stingray actively encourages one or more parties to use the Stingray Music Method in a manner that infringes, literally and/or under the doctrine of equivalents, at least claim 6 of the ô121 Patent. Specifically, through the Stingray Music Method, Stingray induces one or more parties (*e.g.*, AT&T or subscribers/end-users), to perform a method for providing an on-demand service to a user of a set-top-box (*e.g.*, an AT&T set-top-box).



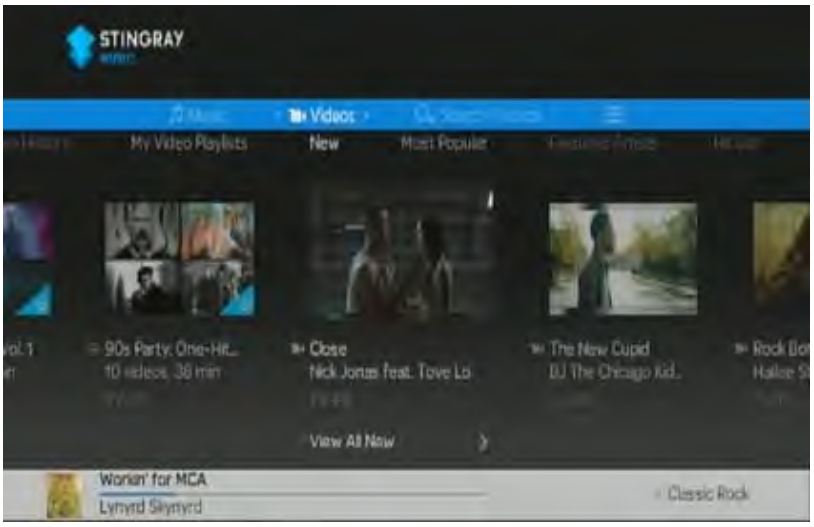


139. In the Stingray Music Method, the set-top-box (*e.g.*, the AT&T set-top-box) receives via a cable connected to a network (*e.g.*, AT&Tôs U-verse® distribution network) a media channel (*e.g.*, the ñClassic Rockò media channel) comprising a stream of audio and video data (*e.g.*, audio data for the song ñBack on the Chain Gangò or ñWorkinô for MCAò and video data including song title, artist name, and album art data).

140. In the Stingray Music Method, the set-top-box displays on a display device video corresponding to the video data stream (*e.g.*, video corresponding to the song title, artist name, and album art data for the song ñBack on the Chain Gangò or ñWorkinô for MCAò).

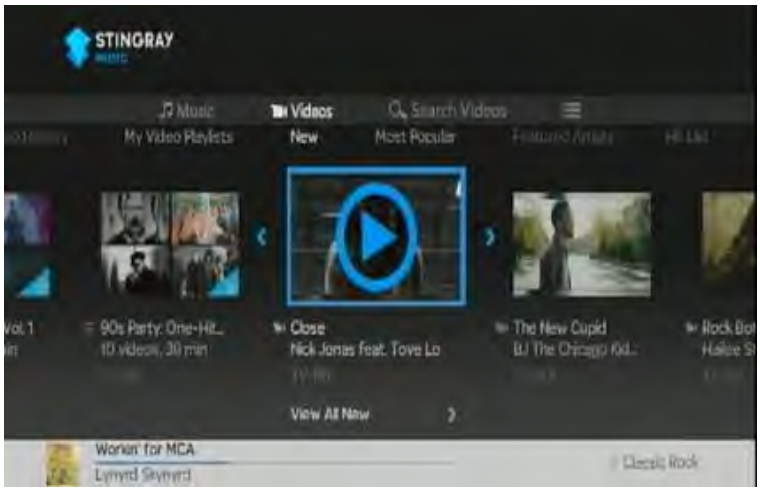


141. In the Stingray Music Method, while displaying said video (*e.g.*, the video corresponding to the song title, artist name, and album art data for the song ñBack on the Chain Gangò or ñWorkinô for MCAò), the set-top-box receives video identifier information (*e.g.*, a thumbnail or title identifying a music video for the song entitled ñCloseò) transmitted via the cable connected to the network. The video identifier information comprises an identifier for identifying an available on-demand video (*e.g.*, the music video for the song entitled ñCloseò).



142. In the Stingray Music Method, the set top box displays on the display device, as a result of receiving said video identifier information (*e.g.*, the thumbnail or title identifying the music video for the song entitled ñCloseò), a user selectable element (*e.g.*, a thumbnail image for the music video for the song entitled ñCloseò) for requesting the available on-demand video (*e.g.*, the music video for the song entitled ñCloseò) while also displaying video corresponding to the video data stream (*e.g.*, the video corresponding to the song title, artist name, and album art data for the song ñBack on the Chain Gangò or ñWorkinô for MCAò) so that the user can see the user selectable element (*e.g.*, the thumbnail image for the music video for the song entitled ñCloseò) while also seeing the displayed video corresponding to the video data stream (*e.g.*, the video corresponding to the song title, artist name, and album art data for the song ñBack on the

Chain Gangò or ñWorkinô for MCAò). The user selectable element (*e.g.*, the thumbnail image for the music video for the song entitled ñCloseò) is associated with the available on-demand video (*e.g.*, the music video for the song entitled ñCloseò).

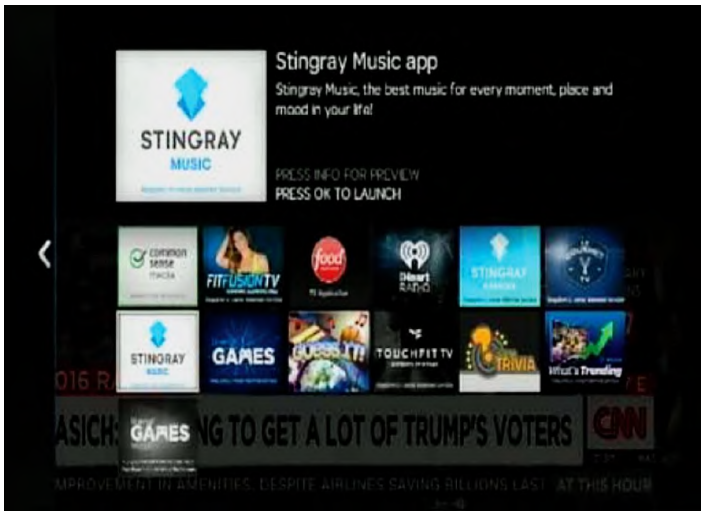


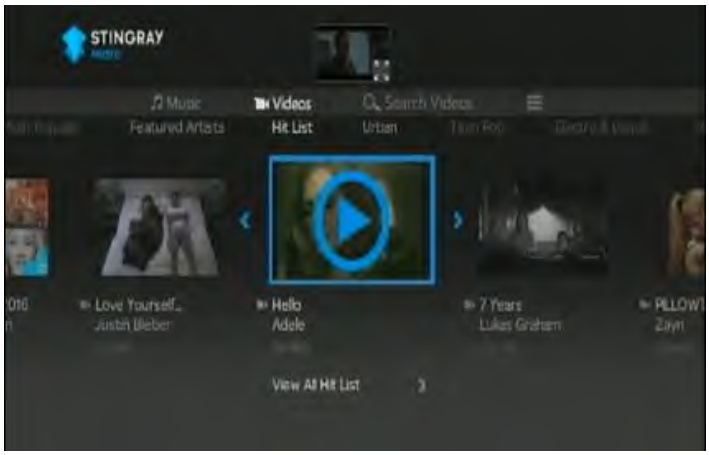
143. In the Stingray Music Method, the set-top-box detects that the user has selected the selectable element (*e.g.*, the thumbnail image for the music video for the song entitled ñCloseò) for requesting the available on-demand video (*e.g.*, the music video for the song entitled ñCloseò).

144. In the Stingray Music Method, in response to detecting that the user has selected the selectable element (*e.g.*, the thumbnail or title identifying the music video for the song entitled ñCloseò), the set-top-box causes an on-demand video system (*e.g.*, one or more servers) to transmit to the set-top-box the available on-demand video (*e.g.*, the music video for the song entitled ñCloseò). Causing the on-demand video system to transmit to the set-top-box the available on-demand video (*e.g.*, the music video for the song entitled ñCloseò) comprises the set-top-box transmitting to the on-demand video system an on-demand request message (*e.g.*, a message indicating that the thumbnail or title identifying the music video for the song entitled

ñCloseò was selected) configured to cause the on-demand video system to transmit to the set-top-box the available on-demand video (*e.g.*, the music video for the song entitled ñCloseò).

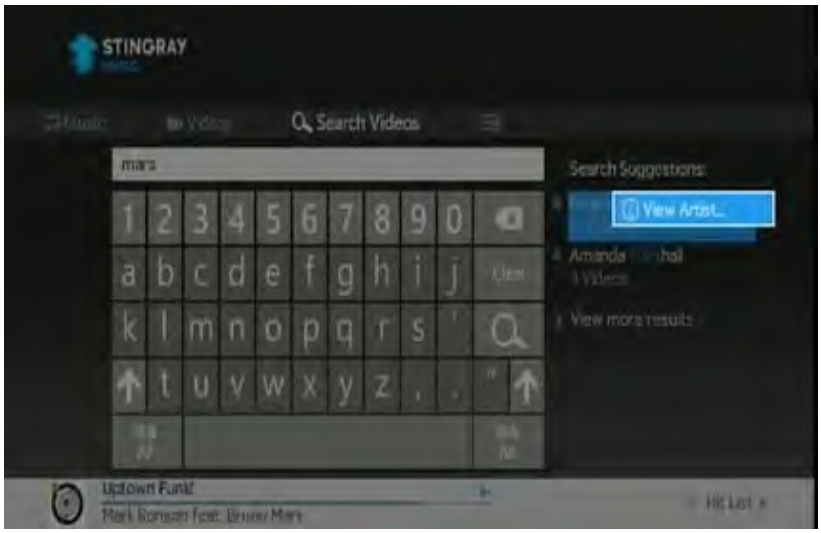
145. Stingray actively encourages one or more parties to use the Stingray Music Method in a manner that infringes, literally and/or under the doctrine of equivalents, at least claim 14 of the ô121 Patent. Specifically, through the Stingray Music Method, Stingray induces one or more parties (*e.g.*, AT&T or subscribers/end-users) to perform a method for providing an on-demand service to a user of a set-top-box (*e.g.*, an AT&T set-top-box).





146. In the Stingray Music Method, the set-top-box (*e.g.*, the AT&T set-top-box) receives via a cable connected to a network (*e.g.*, AT&Tôs U-verse® distribution network) a

media channel (*e.g.*, the ñHit Listò media channel) comprising a stream of audio and video data (*e.g.*, audio corresponding to the song ñUptown Funk!ò and video data including song title, artist name, and album art data).



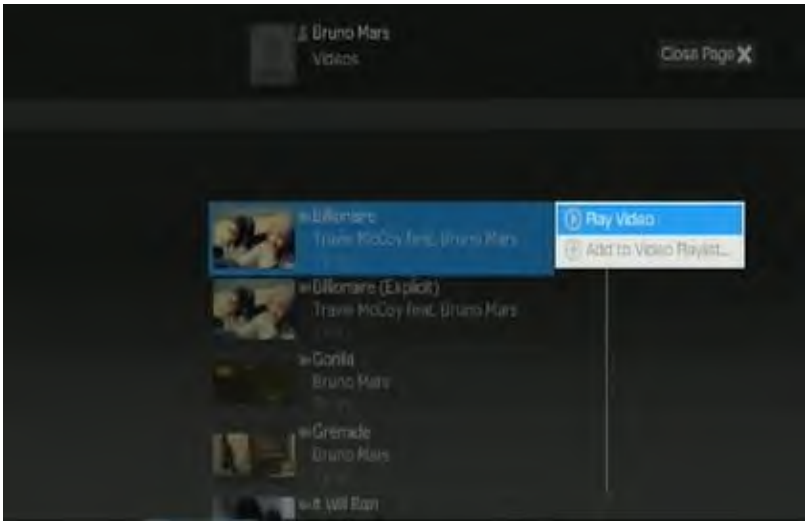
147. In the Stingray Music Method, the set-top-box displays on a display device video corresponding to the video data stream (*e.g.*, video corresponding to the song title, artist name, and album art data for the song ñUptown Funk!ò).

148. In the Stingray Music Method, while displaying said video (*e.g.*, the video corresponding to the song title, artist name, and album art data for the song ñUptown Funk!ò), the set-top-box receives on-demand video information (*e.g.*, search suggestions resulting from the searching on-demand videos for ñmarsò) transmitted via the cable connected to the network.

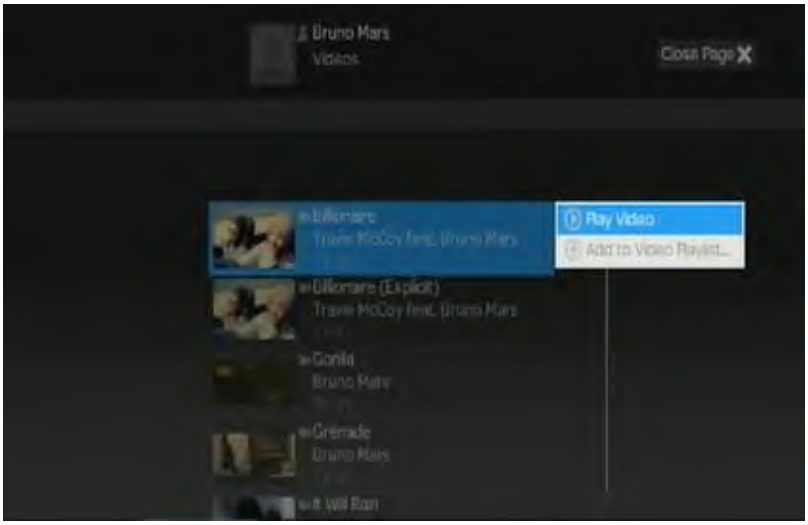
149. In the Stingray Music Method, the set top box displays on the display device, as a result of receiving the on-demand video information (*e.g.*, the search suggestions resulting from the searching on-demand videos for ñmarsò), a user selectable element (*e.g.*, a user selectable element for the suggested search for Bruno Mars videos) for requesting information identifying a set of available on-demand videos (*e.g.*, the set of 12 available Bruno Mars on-demand videos) while also displaying the video corresponding to the video data stream (*e.g.*, the video

corresponding to the song title, artist name, and album art data for the song ñUptown Funk!ò) so that the user can see the user selectable element (*e.g.*, the user selectable element for the suggested search for Bruno Mars videos) while also seeing the displayed video corresponding to the video data stream (*e.g.*, the video corresponding to the song title, artist name, and album art data for the song ñUptown Funk!ò). The user selectable element (*e.g.*, the user selectable element for the suggested search for Bruno Mars videos) is associated with the set of available on-demand videos (*e.g.*, the set of 12 available Bruno Mars on-demand videos).

150. In the Stingray Music Method, in response to the user of the client system selecting the user selectable element (*e.g.*, the user selectable element for the suggested search for Bruno Mars videos), the set-top-box transmits to an on-demand system (*e.g.*, one or more servers) an on-demand request message for causing the on-demand system to transmit to the set-top-box the information identifying the set of available on-demand videos (*e.g.*, information identifying the set of 12 available Bruno Mars on-demand videos).



151. In the Stingray Music Method, the set-top-box displays a menu of the available on-demand videos (*e.g.*, a menu of the available Bruno Mars on-demand videos) as a result of receiving the information.



COUNT I
(Infringement of U.S. Patent No. 8,769,602)
(35 U.S. C. § 271(a))

152. Music Choice repeats and re-alleges each and every allegation of paragraphs 1-151 as if fully set forth herein.

153. The ô602 Patent is valid and enforceable.

154. By its use, sale, and/or offer for sale in the United States, and/or importation into the United States, of the Stingray Music System/Method, Stingray and/or Stingray jointly with one or more parties, such as Service Providers, has been and is now infringing at least claims 1 and 8 of the ô602 Patent in violation of 35 U.S.C. § 271(a).

155. Stingrayôs actions are without the consent of Music Choice.

156. Stingrayôs infringement has been and is now willful and deliberate. Stingray has and continues to use, sell and/or offer for sale in the United States, and/or import into the United States, the infringing Stingray Music System/Method despite an objectively high likelihood that its actions constituted infringement of the ô602 Patent. This objectively-defined risk of infringement was known or so obvious that it should have been known to Stingray.

157. As a result of Stingrayôs actions, Music Choice has suffered and continues to suffer substantial injury. Music Choice has been and will continue to be irreparably harmed unless Stingrayôs infringement of the ô602 Patent is enjoined.

158. Music Choice has been and will continue to be damaged by Stingrayôs infringement of the ô602 Patent, in an amount to be proven at trial.

159. At least by filing and serving the original complaint for patent infringement on June 6, 2016, Music Choice has given Stingray written notice of its infringement.

COUNT II
(Infringement of U.S. Patent No. 9,357,245)
(35 U.S. C. § 271(a))

160. Music Choice repeats and re-alleges each and every allegation of paragraphs 1-159 as if fully set forth herein.

161. The ô245 Patent is valid and enforceable.

162. By its manufacture, use, sale, and/or offer for sale in the United States, and/or importation into the United States, of the Stingray Music System/Method, Stingray and/or Stingray jointly with one or more parties, such as Service Providers, has been and is now infringing at least claims 1, 12 and 17 of the ô245 Patent in violation of 35 U.S.C. § 271(a).

163. Stingrayôs actions are without the consent of Music Choice.

164. Stingrayôs infringement has been and is now willful and deliberate. Stingray has and continues to use, sell and/or offer for sale in the United States, and/or import into the United States, the infringing Stingray Music System/Method despite an objectively high likelihood that its actions constituted infringement of the ô245 Patent. This objectively-defined risk of infringement was known or so obvious that it should have been known to Stingray.

165. As a result of Stingrayôs actions, Music Choice has suffered and continues to suffer substantial injury. Music Choice has been and will continue to be irreparably harmed unless Stingrayôs infringement of the ô245 Patent is enjoined.

166. Music Choice has been and will continue to be damaged by Stingrayôs infringement of the ô245 Patent, in an amount to be proven at trial.

167. At least by filing and serving the original complaint for patent infringement on June 6, 2016, Music Choice has given Stingray written notice of its infringement.

COUNT III
(Infringement of U.S. Patent No. 7,320,025)
(35 U.S. C. §§ 271(a) and (b))

168. Music Choice repeats and re-alleges each and every allegation of paragraphs 1-167 as if fully set forth herein.

169. The ô025 Patent is valid and enforceable.

170. Service Providers and/or Service Providers jointly with one or more parties, such as subscribers/end-users, perform the method of claim 1 of the ô025 patent as described above.

171. Stingray is inducing infringement of claim 1 of the ô025 patent in violation of 35 U.S.C. § 271(b) by actively encouraging one or more parties, such as Service Providers and/or Service Providers jointly with additional third parties, such as subscribers/end-users, to perform the method of claim 1 of the ô121 patent as described above while knowing that such acts constitute infringement.

172. By its use, sale, and/or offer for sale in the United States, and/or importation into the United States, of the Stingray Music System/Method, Stingray and/or Stingray jointly with one or more parties, such as Service Providers, has been and is now infringing at least claim 8 of the ô025 Patent in violation of 35 U.S.C. § 271(a).

173. Stingrayôs actions are without the consent of Music Choice.

174. Stingrayôs infringement has been and is now willful and deliberate. Stingray has and continues to use, sell, offer for sale in the United States, import into the United States, and/or induce third parties to use the infringing Stingray Music System/Method in the United States, despite an objectively high likelihood that its actions constituted infringement of the ô025 Patent. This objectively-defined risk of infringement was known or so obvious that it should have been known to Stingray.

175. As a result of Stingrayôs actions, Music Choice has suffered and continues to suffer substantial injury. Music Choice has been and will continue to be irreparably harmed unless Stingrayôs infringement of the ô025 Patent is enjoined.

176. Music Choice has been and will continue to be damaged by Stingrayôs infringement of the ô025 Patent, in an amount to be proven at trial.

177. At least by filing and serving the original complaint for patent infringement on June 6, 2016, Music Choice has given Stingray written notice of its infringement.

COUNT IV
(Infringement of U.S. Patent No. 9,351,045)
(35 U.S. C. § 271(a))

178. Music Choice repeats and re-alleges each and every allegation of paragraphs 1-177 as if fully set forth herein.

179. The ô045 Patent is valid and enforceable.

180. By its manufacture, use, sale, and/or offer for sale in the United States, and/or importation into the United States, of the Stingray Music System/Method, Stingray and/or Stingray jointly with one or more parties, such as Service Providers, has been and is now infringing at least claims 1, 6, 11 and 16 of the ô045 Patent in violation of 35 U.S.C. § 271(a).

181. Stingrayôs actions are without the consent of Music Choice.

182. Stingrayôs infringement has been and is now willful and deliberate. Stingray has and continues to manufacture, use, sell and/or offer for sale in the United States, and/or import into the United States, the infringing Stingray Music System/Method despite an objectively high likelihood that its actions constituted infringement of the ó045 Patent. This objectively-defined risk of infringement was known or so obvious that it should have been known to Stingray.

183. As a result of Stingrayôs actions, Music Choice has suffered and continues to suffer substantial injury. Music Choice has been and will continue to be irreparably harmed unless Stingrayôs infringement of the ô045 Patent is enjoined.

184. Music Choice has been and will continue to be damaged by Stingrayôs infringement of the ô045 Patent, in an amount to be proven at trial.

185. At least by filing and serving the original complaint for patent infringement on June 6, 2016, Music Choice has given Stingray written notice of its infringement.

COUNT V
(Infringement of U.S. Patent No. 9,414,121)
(35 U.S. C. §§ 271(a) and (b))

186. Music Choice repeats and re-alleges each and every allegation of paragraphs 1-185 as if fully set forth herein.

187. The ô121 Patent is valid and enforceable.

188. By its use, sale, and/or offer for sale in the United States, and/or importation into the United States, of the Stingray Music System/Method, Stingray and/or Stingray jointly with one or more parties, such as Service Providers, has been and is now infringing at least claim 1 of the ô121 Patent in violation of 35 U.S.C. § 271(a).

189. Service Providers, alone or jointly with one or more subscribers/end-users, manufacture and/or use the system of claim 1 of the ô121 patent and the method of claims 6 and 14 of the ô121 patent as described above.

190. Stingray is inducing infringement of at least claims 1, 6, and 14 of the ô121 patent in violation of 35 U.S.C. § 271(b) by actively encouraging Service Providers, alone or jointly with one or more subscribers/end-users, to manufacture or use the system of claim 1 of the ô121 patent and to perform the method of claims 6 and 14 of the ô121 patent as described above while knowing that such acts constitute infringement.

191. End-users are using the system of claim 1 of the ô121 patent and the method of claims 6 and 14 of the ô121 patent as described above.

192. Stingray is inducing infringement of at least claims 1, 6, and 14 of the ô121 patent in violation of 35 U.S.C. § 271(b) by actively encouraging subscribers/end-users to use the system of claim 1 of the ô121 patent and to perform the method of claims 6 and 14 of the ô121 patent as described above while knowing that such acts constitute infringement.

193. Stingrayôs actions are without the consent of Music Choice.

194. Stingrayôs infringement has been and is now willful and deliberate. Stingray has and continues to use, sell and/or offer for sale in the United States, import into the United States, and/or induces one or more parties to manufacture and/or use the infringing Stingray Music System/Method in the United States despite an objectively high likelihood that its actions constituted infringement of the ó121 Patent. This objectively-defined risk of infringement was known or so obvious that it should have been known to Stingray.

195. As a result of Stingrayôs actions, Music Choice has suffered and continues to suffer substantial injury. Music Choice has been and will continue to be irreparably harmed unless Stingrayôs infringement of the ô121 Patent is enjoined.

196. Music Choice has been and will continue to be damaged by Stingrayôs infringement of the ô121 Patent, in an amount to be proven at trial.

197. At least by filing and serving the first amended complaint on August 12, 2016 for patent infringement, Music Choice has given Stingray written notice of its infringement.

JURY DEMAND

198. Music Choice hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Music Choice prays that the Court enter judgment against Stingray and in favor of Music Choice, as follows:

A. Finding that the ô602 Patent, the ô245 Patent, the ô025 Patent, the ô045 Patent, and the ô121 Patent were duly and lawfully issued, and are valid and enforceable.

B. Finding that Stingray has infringed one or more of the claims of the ô602 Patent, the ô245 Patent, the ô025 Patent, the ô045 Patent, and the ô121 Patent;

C. Awarding damages to Music Choice in accordance with 35 U.S.C. § 284, including pre-judgment and post-judgment interest, to compensate Music Choice for Stingrayôs infringement of the ô602 Patent, the ô245 Patent, the ô025 Patent, the ô045 Patent, and the ô121 Patent;

D. Ordering preliminary and permanent injunctive relief restraining and enjoining Stingray and its officers, agents, attorneys, employees, and those acting in privity or active

concert with Stingray, from infringement of the ô602 Patent, the ô245 Patent, the ô025 Patent, the ô045 Patent, and the ô121 Patent for the full terms thereof;

E. Finding that this case is exceptional pursuant to 35 U.S.C. § 285;

F. Awarding Music Choice its costs and attorneysô fees; and

G. Awarding Music Choice such other and further relief as this Court deems just and proper.

DATED: March 17, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Courtôs CM/ECF system per Local Rule CV-5(a)(3) on March 172, 2017.

/s/ Collin Maloney

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

MUSIC CHOICE, *Plaintiff*, v. STINGRAY DIGITAL INC. (f/k/a STINGRAY DIGITAL GROUP INC.) and STINGRAY MUSIC USA, INC., *Defendants*.	Civil Action No. 2:16-CV-0586-JRG-RSP LEAD CASE **Jury Trial Demanded** **FILED UNDER SEAL**

MUSIC CHOICE'S OPPOSITION TO DEFENDANTS' *DAUBERT* MOTION TO EXCLUDE CERTAIN OPINIONS AND TESTIMONY OF MUSIC CHOICE'S DAMAGES EXPERT, DR. KEITH R. UGONE

TABLE OF CONTENTS

Page

I. INTRODUCTION 1
II. COUNTER-STATEMENT OF FACTS 1
A. Music Choice and the Asserted Patents 1
B. Stingray Is the Only Major Direct Competitor of Music Choice 2
C. Stingray Displaced Music Choice as [redacted] Provider 2
D. Stingray Displaced Music Choice as [redacted] Provider 3
E. Summary of Dr. Ugone's Opinions 3
III. LEGAL STANDARDS 5
IV. ARGUMENT 6
A. Dr. Ugone's [redacted] Analysis Is Sound 6
B. Dr. Ugone's [redacted] Analysis Is Sound 10
C. Dr. Ugone's Price Erosion Opinions Are Reliable 11
D. Dr. Ugone's Commercial Success Opinions Are Reliable 13
V. CONCLUSION 15

TABLE OF AUTHORITIES

Page(s)

Campbell ex rel. Campbell v. Metro. Prop. & Cas. Ins. Co.,
239 F.3d 179 (2d Cir. 2001).....9

Chrimar Sys., Inc. v. ADTRAN, Inc.,
No. 6:15-CV-00618-JRG, D.I. 617 (E.D. Tex. Nov. 7, 2016).....15

Datatreasury Corp. v. Wells Fargo & Co.,
No. 2:06-CV-072, 2010 WL 11475580 (E.D. Tex. Feb. 26, 2010).....15

Daubert v. Merrell Dow Pharm., Inc.,
509 U.S. 579 (1993)..... passim

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851 F.2d 1387 (Fed. Cir. 1988).....14

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147 F. App'x 979 (Fed. Cir. 2005) 13

Ericsson, Inc. v. Harris Corp.,
No. 4:98-cv-325, 2001 WL 36131932 (E.D. Tex. Mar. 13, 2001).....13

FastShip, LLC v. United States,
131 Fed. Cl. 592 (2017) 7

Funai Elec. Co. v. Daewoo Elecs. Corp.,
616 F.3d 1357 (Fed. Cir. 2010).....6

Genband US LLC v. Metaswitch Networks Corp.,
No. 2:14-CV-33-JRG-RSP, 2016 WL 98745 (E.D. Tex. Jan. 8, 2016).....14, 15

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No. 3:11-0058, 2012 WL 90445 (M.D. Tenn. Jan. 11, 2012) 9

i4i Ltd. v. Microsoft Corp.,
598 F.3d 831 (Fed. Cir. 2010).....5

Intellectual Ventures II LLC v. Sprint Spectrum, L.P.,
No. 2:17-CV-0661-JRG-RSP, 2019 WL 1877309 (E.D. Tex. Apr. 26, 2019).....5

Johnson v. Arkema,
685 F.3d 452 (5th Cir. 2012) 5

Lam, Inc. v. Johns-Manville Corp.,
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TABLE OF AUTHORITIES
(continued)

Page

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95 F.3d 1109 (Fed. Cir. 1996).....6

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No. 2:13-CV-13-JRG-RSP, 2014 WL 4403186 (E.D. Tex. Sept. 5, 2014).....15

Pipitone v. Biomatrix, Inc.,
288 F.3d 239 (5th Cir. 2002) 5

Primrose Operating Co. v. Nat'l Am. Ins. Co.,
382 F.3d 546 (5th Cir. 2004) 14

Pro-Mold & Tool Co. v. Great Lakes Plastics, Inc.,
75 F.3d 1568 (Fed. Cir. 1996).....14

Spellbound Dev. Group Inc. v. Pac. Handy Cutter, Inc.,
No. SACV 09-0951 DOC (ANx), 2012 WL 8748801
(C.D. Cal. Feb. 24, 2012).....11

SSL Servs., LLC v. Citrix Sys., Inc.,
769 F.3d 1073 (Fed. Cir. 2014).....7

Standard Havens Prods., Inc. v. Gencor Indus., Inc.,
953 F.2d 1360 (Fed. Cir. 1991).....10

Stryker Corp. v. Intermedics Orthopedics, Inc.,
891 F. Supp. 751 (E.D.N.Y. 1995) 11

Stryker Corp. v. Intermedics Orthopedics, Inc.,
96 F.3d 1409 (Fed. Cir. 1996).....10

Water Techs. Corp. v. Calco, Ltd.,
850 F.2d 660 (Fed. Cir. 1988).....6

RULES

Fed. R. Evid. 702 5

I. INTRODUCTION

The evidence at trial will show that Stingray caused [redacted] former Music Choice customers ([redacted]) to switch their business to Stingray and provided them with music services that infringe Music Choice's patents. Accordingly, this is a paradigmatic lost profits case, in which Music Choice intends to prove that but for infringement, it would have made specific, identifiable sales.

Dr. Ugone's role was to calculate the amount of the lost profits relating to these [redacted] customers, which he did by reviewing various information, including the contracts between Music Choice and the stolen customers. This is a much more straightforward task than performing a subjective 15-factor *Georgia-Pacific* reasonable royalty analysis, and Stingray's attempt to *Daubert* his calculations is unavailing. Dr. Ugone also analyzed the price erosion caused by Stingray's entry into the market with respect to [redacted] customers. Finally, he provided opinions on commercial success. In all cases, he used well-established methodologies for performing the analysis, and Stingray's criticisms go to weight, not admissibility.

II. COUNTER-STATEMENT OF FACTS

A. Music Choice and the Asserted Patents

Music Choice is a pioneer in the provision of music video services. It launched its residential music channels in the U.S. in 1991, and its residential music services remain the core of its business. Report[1] ¶ 29. Music Choice has a demonstrated history of innovation, including, for example, that it was the first digital audio music broadcaster, the first music broadcaster to provide an on-screen interface, and the first to provide links between television and broadband.

[1] Music Choice retains the naming convention adopted by Stingray in connection with its motion: "Report" for Dr. Ugone's September 27, 2017 initial report (Ex. 1 hereto), and "Supplemental Report" for Dr. Ugone's April 12, 2019 supplemental report (Ex. 3 hereto).

Report ¶ 30. Music Choice has obtained an extensive patent portfolio that includes the patents in suit, which are directed, among other things, to systems and methods for supplementing broadcast media services with on-demand content that enable subscribers to exercise control over the selection and timing of the content they wish to view (the '025 and '045 "VOD Linking Patents") and for providing video images to complement an audio data stream (the '245 "Visual Complement Patent"). Report ¶ 45. Music Choice is a multi-platform service that delivers music and music videos across TV, mobile, and the web (including audio music channels and a music video-on-demand network) to millions of households in the U.S. *See* Report ¶¶ 43-46; Ex. 4 ("About Music Choice" webpage). Stingray's own documents confirm that [redacted].

B. Stingray Is the Only Major Direct Competitor of Music Choice

Stingray, which entered the U.S. in 2010, is Music Choice's only significant competitor. Report ¶¶ 34, 62(a)(ii) & (c). Stingray has three products in the United States relevant to Music Choice's claims: (1) [redacted], which it sold to [redacted] and Music Choice accuses of infringing the '025 and '045 VOD Linking Patents, (2) [redacted], which it provides to [redacted] and Music Choice accuses of infringing the '245 Visual Complement Patent, and (3) [redacted] and which Music Choice does not accuse of infringement in this case. Report ¶¶ 47-49.

C. Stingray Displaced Music Choice as [redacted] Provider

Music Choice first secured [redacted] subscriber business in [redacted], pursuant to which it provided music channels and music videos to [redacted]. Report ¶ 67. [redacted] renewed its contracts with Music Choice through

[redacted], after which Music Choice lost [redacted] business to Stingray. Report ¶¶ 67-68. Stingray had tried to win [redacted] business earlier, but succeeded at that time by [redacted] [redacted]. Indeed, Stingray had to specifically [redacted] [redacted]. Report ¶ 69(a)(i), (b), (c).

When Music Choice lost [redacted] as a customer to Stingray, [redacted] was paying [redacted] [redacted]. Report ¶ 67(c). Stingray ultimately succeeded by [redacted] [redacted]. Report ¶¶ 69-71. It is undisputed that [redacted] [redacted]. Ex. 7 (Riley Tr.) 46:6-15.

D. Stingray Displaced Music Choice as [redacted] Provider

[redacted] was a Music Choice customer until [redacted], when it switched its business to Stingray. Report ¶ 75. Stingray initially provided [redacted] with [redacted], but starting in at least [redacted], Stingray began providing [redacted] with the infringing [redacted]. *Id.*

E. Summary of Dr. Ugone's Opinions

Lost Profits for Loss of [redacted] Contracts: Dr. Ugone's first task was to calculate the lost profits of Music Choice caused by the loss of the [redacted] accounts to Stingray competition. *See, e.g.*, Report ¶¶ 7-8. Dr. Ugone examined the evidence that there were only two viable competitors for [redacted] business and that Music Choice lost

business from both customers as a result of Stingray's infringement. He then used the actual contracts between Music Choice and the customers to [redacted]. Stingray's expert, Michele Riley, did not contest [redacted]. *See* Ex. 8 (Riley Supp. Rebuttal Report) ¶¶ 28-169. Dr. Ugone determined Music Choice's lost profits through August 2019 were [redacted], based on Stingray's infringement of the VOD Linking Patents, and [redacted], based on Stingray's infringement of the Visual Complement Patent. *See* Supplemental Report ¶ 9, Supp. Ex. 7. In doing so, he expressly considered and analyzed each of the four, non-exclusive *Panduit* factors. *See* Report ¶¶ 52-83.

Price Erosion: Dr. Ugone also calculated price erosion damages with respect to [redacted] customers for whom Music Choice had to lower its prices as a result of competition with Stingray's infringing products. Dr. Ugone observed that [redacted] Report ¶¶ 86, 88; *see also, e.g.*, Supplemental Report Supp. Ex. 8. To calculate price erosion damages, Dr. Ugone compared [redacted] *See* Report ¶ 90. He then [redacted]. *See id.* Applying a [redacted], Dr. Ugone concluded that Music Choice's price-erosion damages through August 2019 are [redacted]. *See id.*; Supplemental Report ¶¶ 14-16.

Commercial Success: Finally, Dr. Ugone analyzed commercial success of the '245 patent, opining as discussed below, that the technology in the '245 patent has been the subject of

significant commercial success in the marketplace.

III. LEGAL STANDARDS

The Federal Rules of Evidence and *Daubert* establish that this Court, in assessing expert testimony, must determine whether "the reasoning or methodology underlying the testimony is scientifically valid and [] whether that reasoning or methodology properly can be applied to the facts in issue." *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 593 (1993). "The inquiry envisioned by Rule 702 is . . . a flexible one." *Id*. at 594-95. "Its overarching subject is the scientific validity—and thus the evidentiary relevance and reliability—of the principles that underlie a proposed submission." *Id*. Therefore, "[i]t bears reminding that the trial court's role as gatekeeper under *Daubert* is not intended to serve as a replacement for the adversary system." *Pipitone v. Biomatrix, Inc.*, 288 F.3d 239, 250 (5th Cir. 2002) (internal quotation omitted). Rather, "as *Daubert* makes clear, 'vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence." *Id*. (quoting *Daubert*, 509 U.S. at 596).

"[T]he proponent of the expert's opinion testimony need not prove that the expert's testimony is *correct*—the proponent need only prove by a preponderance of the evidence that the testimony is *reliable*." *Intellectual Ventures II LLC v. Sprint Spectrum, L.P.*, No. 2:17-CV-0661-JRG-RSP, 2019 WL 1877309, at *1 (E.D. Tex. Apr. 26, 2019) (citing *Johnson v. Arkema*, 685 F.3d 452, 459 (5th Cir. 2012)); *see also i4i Ltd. v. Microsoft Corp.*, 598 F.3d 831, 854 (Fed. Cir. 2010), *aff'd*, 564 U.S. 91 (2011) ("*Daubert* and Rule 702 are safeguards against unreliable or irrelevant opinions, not guarantees of correctness."). Similarly, "[t]he court's 'focus, of course, must be solely on principles and methodology, *not* on the conclusions that they generate.'" *Intellectual Ventures*, 2019 WL 1877309 at *1 (quoting *Daubert*, 509 U.S. at 595).

IV. ARGUMENT

A. Dr. Ugone's [redacted] Analysis Is Sound

Proof of lost profits requires the patentee to show "evidence of a reasonable probability that the patent holder would have made the asserted profits absent infringement." *Minco, Inc. v. Combustion Eng'g, Inc.*, 95 F.3d 1109, 1118 (Fed. Cir. 1996). The lost profits analysis is substantially simplified in a two-player market in which there is no possibility that a third party would have made any of the infringer's sales, because "[w]here . . . the patent owner and the infringer were the only suppliers of the product, causation may be inferred." *Lam, Inc. v. Johns-Manville Corp.*, 718 F.2d 1056, 1065 (Fed. Cir. 1983). *See also Funai Elec. Co. v. Daewoo Elecs. Corp.*, 616 F.3d 1357, 1375 (Fed. Cir. 2010) (affirming damages award where "evidence of lost profits was premised primarily on Funai's loss to Daewoo of the business of a long-time large customer, for which direct losses were established, with the presentation of expert testimony and evidence that this was essentially a two-supplier market"); *Water Techs. Corp. v. Calco, Ltd.*, 850 F.2d 660, 672 (Fed. Cir. 1988) ("The *Panduit* test in part (2) embodies the idea . . . that lost profits for all sales made by an infringer are easier to obtain where there are only two suppliers in the market, the infringer and the patent owner.").

Stingray's sole criticism of Dr. Ugone's [redacted] lost profits analysis is to challenge his use of [redacted] when calculating damages for the period [redacted].[2] Mot. at 9-

[2] [redacted]

12. It was plainly reasonable for Dr. Ugone to use that figure, [redacted], for the analysis. Indeed, [redacted] was such an obvious choice that Stingray's expert (Ms. Riley) never challenged Dr. Ugone's opinion on that point.

Nevertheless, Stingray asserts that "Dr. Ugone provides no basis for his assumption" "[redacted]" Mot. at 9. Of course, he had a basis—that is, [redacted] Sometimes simplicity has its benefits, and here, we have a direct comparable [redacted]. Rather than assume an inflation rate, monopoly power on the part of Music Choice, or some other justification for an increase, Dr. Ugone conservatively used [redacted]. Such a prior agreement is often—as it is here—the most reliable evidence available in setting damages for infringement. *See, e.g., SSL Servs., LLC v. Citrix Sys., Inc.*, 769 F.3d 1073, 1093 (Fed. Cir. 2014) (upholding damages award based on distribution agreements between infringer and patentee's predecessor, and where defendant's expert acknowledged "these agreements were the closest comparable information . . . that he could find"); *FastShip, LLC v. United States*, 131 Fed. Cl. 592, 623 (2017), *aff'd as modified*, 892 F.3d 1298 (Fed. Cir. 2018) ("the court finds that two licenses [between patentee and defendant's vendor] . . . are the most relevant to determining a reasonable royalty").

Pointedly, there is no disagreement between the experts on the propriety of using the [redacted]. Although Ms. Riley had various other criticisms of Dr. Ugone's opinions, she did

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[redacted] Stingray does not challenge that assumption, or Dr. Ugone's calculations of [redacted] lost profits damages for the period from [redacted] to the time of trial.

not challenge Dr. Ugone's assumption as to the reasonableness of using [redacted]. *See, e.g.*, Ex. 7 (Riley Tr.) at 59:3-64:17; Ex. 8 (Riley Supp. Report) ¶¶ 28-169.

Although not supported by their expert, Stingray raises several additional criticisms. None have merit, and if at all, they go to the weight of the testimony not admissibility.

First, Stingray argues that Dr. Ugone improperly relies on a contractual rate that "[redacted]. Mot. at 10 (emphasis omitted). Dr. Ugone considered this point and explicitly identified "[redacted]" stating that "[redacted]" *See, e.g.*, Report ¶ 56(b)(i). Among that evidence, Dr. Ugone pointed to [redacted]" Report ¶ 56(b)(i), Ex. 9 (STINGRAY017894) (emphasis added). The jury could certainly conclude [redacted]. As Dr. Ugone describes, among other things, the VOD Linking Patents enable consumers viewing a traditional linear audio channel (*e.g.*, a traditional television channel with scheduled programming) to "link" to and activate video-on-demand content, such that "in this way, the technology allows a user to explore and navigate to available video-on-demand content, such as music videos, while still watching and listening to the currently playing content" of a linear audio channel. Report ¶ 42(a). Consistent therewith, Music Choice was providing [redacted]. The fact that [redacted]

[redacted]

Second, Stingray argues that Dr. Ugone's lost-profits analysis—which assumes "that the monthly subscriber rate will remain unchanged"—"contradicts his assumption regarding price erosion." *See* Mot. at 11. No contradiction exists. Dr. Ugone's lost-profits analysis is premised on the continuation of [redacted] contractual rate *in the absence of Stingray's infringement*. The price-erosion methodology, which applies to [redacted] is based on Stingray being out in the marketplace, offering a cheaper, infringing product to [redacted]. The models' assumptions are necessarily different, and there is no contradiction, let alone one that justifies exclusion. *See, e.g.*, *Campbell ex rel. Campbell v. Metro. Prop. & Cas. Ins. Co.*, 239 F.3d 179, 186 (2d Cir. 2001) ("[G]aps or inconsistencies in the reasoning leading to Dr. Rosen's opinion . . . go to the weight of the evidence, not to its admissibility."); *Gibson Guitar Corp. v. 745 LLC*, No. 3:11-0058, 2012 WL 90445, at *10 (M.D. Tenn. Jan. 11, 2012) ("Loy is not an unreliable witness within the meaning of *Daubert* merely because . . . his declaration may contain . . . inconsistencies. Such things go to the weight, not the admissibility of his testimony.").

Third, Stingray argues the [redacted], somehow undermines the reliability of Dr. Ugone's calculations based on [redacted]. *See* Mot. at 9-10. Dr. Ugone [redacted]. His choice of [redacted] is conservative. *See* n.2 *supra*. [redacted]

[redacted]

Finally, Stingray argues Dr. Ugone's methodology is unreliable because he omits "any discussion regarding price elasticity." Mot. at 11. But Stingray's own expert did not even [redacted] Stingray argues nonetheless that because subscriber counts were going down, Music Choice's price would decrease. Why that should be so when the parties [redacted] Stingray does not say. Indeed, the record evidence shows that Music Choice [redacted] Stingray's assumption that the price would have gone down is unsupported, and as with all its other objections goes to the weight of evidence, not admissibility.

B. Dr. Ugone's [redacted] Analysis Is Sound

As to Dr. Ugone's calculation of lost profits in relation to [redacted] Stingray's sole challenge is to his analysis of non-infringing alternatives under *Panduit* Factor 2. Mot. at 8-9. But Stingray misconstrues the non-infringing alternatives analysis. The evidence is that [redacted] *could supply the benefits of the invention*—[redacted]. The existence of other inferior products, like [redacted] is irrelevant, given that "a 'product on the market which lacks the advantages of the patented product can hardly be termed an acceptable substitute.'" *Stryker Corp. v. Intermedics Orthopedics, Inc.*, 96 F.3d 1409, 1418 (Fed. Cir. 1996) (quoting *Standard Havens Prods., Inc. v. Gencor Indus., Inc.*, 953 F.2d 1360 (Fed. Cir. 1991) (internal alterations omitted)).

[redacted] lacked the commercially-desirable features of the Visual Complement Patent, including, e.g., [redacted] Report ¶ 48. Dr. Ugone pointed to evidence showing that: [redacted] Report ¶¶ 48, 57, 76-77; Supplemental Report ¶ 22(a). Thus, Dr. Ugone expressly considered [redacted] as a non-infringing alternative in his *Panduit* Factor 2 analysis and whether it could supply the benefits of the invention. His analysis properly considers whether "the alternative product . . . contain[s] the patented product's advantages." *Stryker Corp. v. Intermedics Orthopedics, Inc.*, 891 F. Supp. 751, 823 (E.D.N.Y. 1995). Stingray's citation to *Spellbound*—in which the court excluded an expert's opinion because "[t]he expert [did not] discuss the basis for [a] conclusion" at all—is thus inapposite. *See* Mot. at 9 (citing *Spellbound Dev. Group Inc. v. Pac. Handy Cutter, Inc.*, No. SACV 09-0951 DOC (ANx), 2012 WL 8748801, at *4 (C.D. Cal. Feb. 24, 2012)).

C. Dr. Ugone's Price Erosion Opinions Are Reliable

Stingray criticizes Dr. Ugone's price erosion methodology as "flawed, speculative, and unreliable" because he allegedly opines "that the entire difference between the monthly subscriber rate in the original contract and the rate in the extension is solely due to Stingray's alleged infringement" and because he allegedly does not "discuss[] and/or consider[] the many other possible reasons for the lower monthly subscriber rates." Mot. at 12-13 (emphasis omitted). Again Stingray takes issue with Dr. Ugone's conclusions, not his methodology.

For example, Stingray incorrectly argues that Dr. Ugone "did not take into account whether any of Stingray's non-infringing music services caused the [providers] to lower the monthly subscriber rates." Mot. at 13 (emphasis omitted). Dr. Ugone's analysis accounts for this consideration by using a baseline that [redacted] Accordingly, the pre-infringement contracts that Dr. Ugone relies on as the "benchmark market" for determining subsequent price erosion in the affected post-infringement market already account for [redacted]. *See generally* Supplemental Report Supp. Ex. 8 (summarizing "Prior Contract[s]" and "Impacted Contract[s]").

Stingray also faults Dr. Ugone for not considering other factors that may have caused per-subscriber rates to drop, all of which go to the weight, not admissibility of Dr. Ugone's opinion. Mot. at 13. Stingray points, e.g., to [redacted]—but this criticism makes little sense, given that, as noted above, [redacted]. If Dr. Ugone were to adjust his methodology to account for the effect of [redacted], he would actually have *increased* those monthly rates, not further decreased them. Moreover, many of Music Choice's pre-infringement contracts [redacted]. *See, e.g.*, Supplemental Report Supp. Ex. 8 at 1, 11, 14, 16, 18, 21, 23, 25. To the extent [redacted] or other factors "may" be relevant to price erosion, Stingray is free to make its argument at trial, but that is no basis to preclude Dr. Ugone's reasoned opinion.[3]

[3] Stingray's reliance on *Ericsson v. Harris* is misleading, as that expert's opinions were not excluded simply for not considering "the many other factors that could cause a manufacturer of a

Finally, Stingray criticizes Dr. Ugone for including price erosion damages based on Music Choice's "agreements with [providers] to whom Stingray did not even offer the allegedly infringing Stingray Music TV App." Mot. at 14. This objection is limited to [redacted] accounting for $[redacted] of the $[redacted] in price erosion damages. *See* Supplemental Report Supp. Ex. 9. But as Dr. Ugone noted, [redacted] *See* Mot. at 14 & Ex. 2 (quoting testimony). In addition, Music Choice had to [redacted] based on knowledge that it was competing directly with Stingray. Having done so, market forces compelled Music Choice to [redacted]. In this vein, Dr. Ugone relied on testimony from [redacted] Report ¶ 86. Dr. Ugone is thus not relying on the sort of "too speculative" evidence that the Federal Circuit found insufficient in *Engineered Products Co. v. Donaldson Co.*, 147 F. App'x 979, 990 (Fed. Cir. 2005) (reversing price erosion damages award where "only support for the inferences" that a bid had been communicated was that relevant personnel "had office space in close proximity to one another").

D. Dr. Ugone's Commercial Success Opinions Are Reliable

Stingray correctly states governing law that, in determining the commercial success of a

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product to lower prices." *See* Mot. at 14 (quoting *Ericsson, Inc. v. Harris Corp.*, No. 4:98-cv-325, 2001 WL 36131932, at *7 (E.D. Tex. Mar. 13, 2001)). Rather, the court excluded the opinions at issue for numerous flaws—including using one party's forecast as a "price reduction curve" for the other party's products, using a misleading "beginning point" that boosted damages by 75%, and "conclud[ing] that price erosion suffered by one Ericsson product would cause price erosion of a whole family of Ericsson's products." *Ericsson*, 2001 WL 36131932 at *7.

patented technology as support for the patent's non-obviousness, "[a] prima facie case of nexus is generally made out when the patentee shows both that there is commercial success, and that the thing (product or method) that is commercially successful is the invention disclosed and claimed in the patent." *Demaco Corp. v. F. Von Langsdorff Licensing Ltd.*, 851 F.2d 1387 (Fed. Cir. 1988). But Stingray's conception of the quantum of evidence legally required to prove the requisite nexus is both overly restrictive and based on an incorrect assessment of the record.

In the context of expert opinions regarding secondary considerations of non-obviousness, "[t]he nexus requirement goes primarily to the weight secondary considerations should be given, and the *Daubert* inquiry is one of admissibility rather than weight." *Genband US LLC v. Metaswitch Networks Corp.*, No. 2:14-CV-33-JRG-RSP, 2016 WL 98745, at *2 (E.D. Tex. Jan. 8, 2016) (citing *Primrose Operating Co. v. Nat'l Am. Ins. Co.*, 382 F.3d 546, 562 (5th Cir. 2004)). Similarly, "[i]t is within the province of the fact-finder to resolve . . . factual disputes regarding whether a nexus exists between the commercial success of the product and its patented features, and to determine the probative value of . . . evidence of secondary considerations." *Pro-Mold & Tool Co. v. Great Lakes Plastics, Inc.*, 75 F.3d 1568, 1574 (Fed. Cir. 1996).

Stingray accuses Dr. Ugone of "not providing a market share analysis" in analyzing commercial success of the Visual Complement Patent. Mot. at 6. This is incorrect—Dr. Ugone's Commercial Success Report notes, [redacted] Commercial Success Report ¶ 39(a). Dr. Ugone's damages Report also notes that the U.S. market is [redacted]. *See, e.g.*, Report ¶ 62(a)(ii) & (c).

Stingray criticizes Dr. Ugone for not citing to evidence "demonstrating the success of [Music Choice's] linear audio music channels, themselves" and instead "cit[ing] to [redacted]

[redacted] Mot. at 15. This oversimplifies Dr. Ugone's analysis. Dr. Ugone specifically considered [redacted] Commercial Success Report ¶ 44. Dr. Ugone also observed [redacted] *Id.* ¶ 41.

This Court has routinely overruled *Daubert* objections such as Stingray now raises. *See, e.g.*, *Genband*, 2016 WL 98745 at *2 ("Even if the product embodies technology other than just the asserted patents, the connection is sufficient to permit the circumstantial inference of a nexus."); *Chrimar Sys., Inc. v. ADTRAN, Inc.*, No. 6:15-CV-00618-JRG, D.I. 617 at 5 (E.D. Tex. Nov. 7, 2016) ("[T]hese opinions regarding commercial success go to the weight of Dr. Madisetti's opinions and not the admissibility."); *Pers. Audio, LLC v. Togi Entm't, Inc.*, No. 2:13-CV-13-JRG-RSP, 2014 WL 4403186, at *2 (E.D. Tex. Sept. 5, 2014) (reports showed "requisite relationship of the patent-in-suit to secondary considerations of nonobviousness.").

Stingray's reliance on *Datatreasury* does not mandate a different result—there the sole evidence on which the plaintiff relied for commercial success was "several licenses it . . . entered into with past and potential accused infringers," and the court found that "Plaintiff has not sufficiently shown that any of the licensees necessarily entered into a license agreement *based on the merits of the claimed invention*." *Datatreasury Corp. v. Wells Fargo & Co.*, No. 2:06-CV-072, 2010 WL 11475580, at *4-*5 (E.D. Tex. Feb. 26, 2010) (emphasis in original).

V. CONCLUSION

Stingray's motion should be denied. Defendants' criticisms are directed to Dr. Ugone's conclusions, not his methodologies, and accordingly do not merit exclusion under *Daubert*.

Date: July 16, 2019

Respectfully submitted,

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CERTIFICATE OF AUTHORIZATION TO FILE UNDER SEAL

I certify that the foregoing document and attachments thereto are authorized to be filed under seal pursuant to the Protective Order entered in this case.

/s/ Martin J. Black
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing documents were served on the following counsel of record via electronic mail on July 16, 2019.

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

MUSIC CHOICE,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Case No. 2:16-cv-00586-JRG-RSP
	§	
STINGRAY DIGITAL GROUP INC.,	§	
	§	
Defendant.	§	

MEMORANDUM OPINION AND ORDER

Before the Court is (1) Plaintiff Music Choice's Daubert Motion to Strike Deposition Testimony of Defendants' Expert Dr. Michael Shamos for Presenting Untimely and Undisclosed Opinions ("Motion to Strike") (Dkt. No. 188) and (2) Music Choice's Alternative Motion for Leave to Serve the Supplemental Expert Report of Samuel Russ, Ph.D ("Motion for Leave") (Dkt. No. 230).

Music Choice raises two separate arguments within its Motion to Strike. Music Choice first seeks to exclude Dr. Shamos' opinion that "the Audio Engine and StillPic Generator components of the accused Ubiquicast machine purportedly send data between them via a shared RAM memory, which according to Dr. Shamos, does not qualify as the 'transmission' of data as recited in '245 claims 10 and 15." (Dkt. No. 188 at 5.) Music Choice also seeks to exclude Dr. Shamos' "invalidity opinion that Rothman made MP4 technology obvious." (Dkt. No. 188 at 6.) Music Choice filed its Motion for Leave seeking to file a supplemental report to address these opinions in the event that Music Choice's Motion to Strike is denied. (Dkt. No. 230.)

The Court will first address Music Choice's argument regarding the allegedly new infringement theory and then address Music Choice's argument regarding the allegedly new invalidity theory. Finally, the Court will address whether the Motion for Leave should be granted

MC-EGLA-000336

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Page 1264 of 1912 (IPR2025-00350)
Stingray Group Inc. et al v. Hernandez-Mondragon

to allow Music Choice to supplement its reports to address both the infringement and the invalidity theory.

I. INFRINGEMENT THEORY REGARDING COMMON MEMORY

Claim 10 is representative of claim 15 here, and claim 10 is dependent upon claim 1. Claim 1 requires:

> 1. A method for providing a visual complement to an audio stream, comprising:
> transmitting, from a first transmission system to a second transmission system, audio data corresponding to a selected song; and
> ***transmitting a data packet that was generated using an identifier identifying the selected song***, wherein the data packet includes a media asset identifier identifying a media asset and further includes song information associated with the selected song, the song information comprising the title of the song and the name of the artist who recorded the song, wherein
> the step of transmitting the data packet comprises transmitting the data packet to a receiving system that is configured such that, in response to receiving the data packet, the receiving system automatically generates a video image using the information included in the data packet and automatically outputs the generated video image such that it is received by a display device that is operable to display the video image to a user of the display device without the user having to select a menu item, and
> the generated video image includes the song information comprising the title of the song and the name of the artist.

(emphasis added). Claim 10 adds the requirement that "the video image is encoded according to a Moving Pictures Experts Group (MPEG) standard."

Within an exhibit to Dr. Shamos' expert report, Dr. Shamos stated that "[t]he StillPic Generator and the Audio engine are the same piece of software. Thus one does not transmit to the other and the StillPic Generator virtual machine cannot act as 'receiving system' for the Audio Engine." (Dkt. No. 188-5 at 12 (using ECF page number).) Elsewhere within the same report, Dr. Shamos stated that "Mr. Lavigne testified that the StillPic Generator and the Audio engine are the same piece of software. Thus one does not transmit to the other and the StillPic Generator virtual

machine cannot act as 'receiving system' for the Audio Engine." (*Id*. at 10 (using ECF page numbers) (internal citations omitted).)

At Dr. Shamos' deposition, Dr. Shamos stated that, "if the Galaxie StillPic generator deposits data in RAM, and the Ubiquicast audio engine retrieves it from RAM, there is no transmission." (Dkt. No. 188-6 at 58:1–4.) He stated that "[s]oftware components running on the same box can't transmit to one another . . . because there is no transmission channel." (*Id*. at 58:7–10.) Dr. Shamos also opined that, "[i]f I put data in RAM and another module of the software takes it out of RAM, there is no transmission." (*Id*. at 58:15–17.)

Music Choice argues that the Dr. Shamos only opines in his expert report "that there was no 'transmission' of data packets between the Audio Engine and StillPic Generator because the two supposedly were 'the same piece of software.'" (Dkt. No. 188 at 5.) Based on Dr. Shamos' statements during his deposition, Music Choice argues that Dr. Shamos pivoted his non-infringement theory to now argue that there is no transmission "because data is purportedly sent between the StillPic Generator and Audio Engine via shared RAM or common memory." (*Id*. at 6.) Music Choice also argues that the terms "RAM" and "common memory" do not appear in the non-infringement report. (*Id*.)

After consideration, the Court **DENIES** Music Choice's Motion to Strike for allegedly new infringement theory regarding common memory because the Court concludes that Dr. Shamos' testimony falls within the scope of his expert report. While Dr. Shamos does not explicitly discuss a common memory non-infringement theory within his report, Dr. Shamos does discuss a non-infringement theory that no transmission occurs as required by the claims because the Audio Engine and StillPic Generator are part of the same software program. Dr. Shamos statements regarding a common memory merely elaborate on the already existing opinions within the expert

non-infringement report. *Gay v. Stonebridge Life Ins. Co.*, 660 F.3d 58, 64 (1st Cir. 2011) ("Although his testimony uses different words than the expert report, it was a reasonable elaboration of the opinion disclosed in the report."); *Sec. & Exch. Comm'n v. Life Partners Holdings, Inc.*, 2013 WL 12076934, at *3 (W.D. Tex. Nov. 8, 2013) (quoting *Thompson v. Doane Pet Care Co.*, 470 F.3d 1201, 1203 (6th Cir. 2006)).

II. INVALIDITY THEORY REGARDING STREAMING VIDEO USING MP4

The Court notes that Dr. Shamos included within his invalidity charts the following statement "Rothman expressly discloses MPEG (MP3) . . . . MP3 is an audio codec. However, Rothman discloses that the materials provided can also be streamed video. Rothman was filed on April 27, 2001, at which time it was conventional to stream videos using MPEG." (Dkt. No. 213-6 at 13.) Thus, the critical issue here is whether this statement and other statements within the Dr. Shamos' report and invalidity charts are sufficient to provide notice of a theory that Rothman made use of MP4 technology obvious. The Court concludes that Dr. Shamos sufficiently disclosed this theory, so the Court denies this portion of Music Choice's Motion to Strike.

At his deposition, Dr. Shamos stated that, "wanting to know about MP3, when MP4 came along it would be completely obvious to use that as one of the streaming — one of the formats that could be used with the streaming application." (Dkt. No. 188-6 at 164:4–7.) Dr. Shamos later stated that "[t]here is not an express reference to MP4 in my Rothman portion of my report." (Dkt. No. 188-6 at 165:3–4.) Music Choice contends that Dr. Shamos' report fails to explicitly or implicitly discuss MP4 in relation to the Rothman reference. (Dkt. No. 188 at 3 (citing Dkt. No. 188-1 at ¶ 4).)

Stingray responded by arguing (1) that "Dr. Shamos' testimony regarding MP4 technology is merely an elaboration on the opinions in his report" and (2) that the testimony "was given in

response to opposing counsel's deposition questioning." (Dkt. No. 213 at 9.) Stingray argues that Dr. Shamos report states that "[i]t is apparent from the development of the prior art that the following elements/limitations were conventional at the time of the earliest filing date of the Asserted Patents: . . . MPEG encoding." (Dkt. No. 213-4 at ¶ 257.) Stingray also points to the report's discussion of several other references showing that MPEG-4 video codecs were disclosed by other prior-art references. (Dkt. No. 213 at 3 n.2 (citing Dkt. No. 213-4 at ¶¶ 133, 169–71, 182–85, 206, 217–18, 230, 244, 250).)

After reviewing the relevant portions of Dr. Shamos' report and the relevant portions of the invalidity charts, the Court concludes that Dr. Shamos sufficiently disclosed the theory that MP4 technology was rendered obvious by Rothman. Providing notice to opposing counsel of the expert's proposed testimony is one of the primary purposes of Rule 26(a)(2)(B). *Effective Expl., LLC v. BlueStone Nat. Res. II, LLC*, No. 216-CV-00607-JRG-RSP, 2017 WL 5895164, at *3 (E.D. Tex. Nov. 13, 2017), *report and recommendation adopted*, No. 2:16-CV-00607-JRG-RSP, 2017 WL 5890082 (E.D. Tex. Nov. 29, 2017), *appeal dismissed*, No. 2018-1365, 2018 WL 3244574 (Fed. Cir. Apr. 26, 2018) (citing *Ciomber v. Coop. Plus, Inc.*, 527 F.3d 635, 642 (7th Cir. 2008)). The Court concludes that providing notice is the primary concern in this case. The relevant portions of the report and invalidity charts sufficiently provide notice of this theory. The invalidity charts state

> Rothman expressly discloses MPEG (MP3) . . . . MP3 is an audio codec. However, Rothman discloses that the materials provided can also be streamed video. Rothman was filed on April 27, 2001, at which time it was conventional to stream videos using MPEG.

(Dkt. No. 213-6 at 13.) Dr. Shamos' discussion of other references makes clear that he considered MP4 or MPEG-4 to be one form of MPEG that was used to stream videos alongside MPEG-2 and

MPEG-7. (*See, e.g.*, Dkt. No. 213-4 at ¶ 170 (discussing Mackintosh reference and the use of a "MPEG-4 video codec"); *see also id.* at ¶¶ 133, 169, 171, 182–85, 206, 217–18, 230, 244, 250.)

III. SUPPLEMENTAL EXPERT REPORT

Because the Court considers the foregoing issues sufficiently close, and in order to mitigate any prejudice to Plaintiff, the Court will **GRANT** Music Choice's Motion for Leave to supplement its expert report with respect to Dr. Shamos' specific non-infringement theory that no transmission occurs because "the Audio Engine and StillPic Generator components of the accused Ubiquicast machine purportedly send data between them via a shared RAM memory," and the allegedly new invalidity theory regarding MP4 technology. The supplemental report of Dr. Russ will be strictly limited to that scope and must be served by no later than noon on Monday, November 11, 2019. Any issues regarding the scope of this report may be raised at the November 12 pretrial conference.

IV. CONCLUSION

For the reasons stated above, the Court **DENIES** Music Choice's Motion to Strike and **GRANTS** Music Choice's Motion for Leave.

SIGNED this 5th day of November, 2019.

ROY S. PAYNE
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

MUSIC CHOICE, *Plaintiff*, v. STINGRAY DIGITAL GROUP INC. and STINGRAY MUSIC, USA, INC., *Defendants*.	§	Case No. 2:16-cv-00586-JRG-RSP **LEAD CASE**
STINGRAY MUSIC, USA, INC, *Plaintiff*, v. MUSIC CHOICE, *Defendant*.	§	Case No. 2:16-cv-00964-JRG-RSP **CONSOLIDATED CASE**

MEMORANDUM ORDER

Defendants Stingray Digital Group Inc. and Stingray, USA, Inc. (collectively "Stingray") filed a Daubert Motion to Exclude Certain Opinions and Testimony of Music Choice's Damages Expert (Dkt. No. 192), which is now before the Court. In this motion, Stingray moves to exclude certain opinions and testimony of Dr. Keith R. Ugone. Stingray seeks to exclude (1) Dr. Ugone's calculation of lost profits relating to two former Music Choice customers that switched their business to Stingray, (2) his analysis of the price erosion allegedly caused by Stingray's entry into the market with respect to ten Music Choice customers, and (3) his opinions on the commercial success of certain Music Choice products and services. (*Id*).[1] For the reasons set forth herein, Stingray's motion is **DENIED**.

[1] Upon receiving the motion, Music Choice filed a response (Dkt. No. 214), to which Stingray filed a reply (Dkt. No. 224) and Music Choice filed a sur-reply (Dkt. No. 236).

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I. BACKGROUND

a. Background of this Action, including Patents-in-Suit

Music Choice filed this patent infringement action on June 6, 2016. (Dkt. No. 192, at 5).[2] This action involves audio and video on demand ("VOD") music channels transmitted to consumers by cable and satellite television providers who serve as multichannel video programming distributors ("MVPD"). (*Id.*, at 1). MVPDs execute a contract with a music service provider where the MVPD agrees to pay the music service provider a monthly rate per subscriber in exchange for one or more music services, including, for example, audio or VOD music channels. (*Id.*, at 2). Typically, each MVPD executes a contract with only one music service provider at a time for a period of several years. (*Id.*, at 3).

After a stay of this action pending *inter partes* review ("IPR"), three patents-in-suit remained: U.S. Patent No. 9,357,245 (the "'245 Patent" or "Visual Complement Patent"), U.S. Patent No. 7,320,025 (the "'025 Patent"), and U.S. Patent No. 9,351,045 (the "'045 Patent"). The '245 Patent is directed to providing visual images to complement an audio data stream, e.g., album art relating to the song being played. (*Id.*, at 5). The '025 and '045 Patents (collectively, the "VOD Linking Patents") are related patents and share a common specification. The VOD Linking Patents are directed to enabling users to exercise control over the selection and timing of the on-demand content they wish to view. (*Id.*).

b. Parties

Music Choice, owned by several MVPDs, has been a music service provider since 1991. It offers audio through its Audio Service, which consists of audio music channels, and VOD music programming, through its VOD Service. (*Id.*, at 3).

[2] The information in the background section was taken from the Parties' briefing. The Court does not hold that these facts are conclusively correct.

Stingray, which entered the United States in 2010, is Music Choice's only significant competitor. Stingray has three products in the United States relevant to Music Choice's claims: (1) the Music TV App, which consists of VOD music programming, which Music Choice accuses of infringing the '025 and '045 VOD Linking Patents; (2) the "OSE2" version of Stingray's UbiquiCAST system, which provides images corresponding to the music playing, which Music Choice accuses of infringing the '025 and '045 VOD Linking Patents; and (3) the "OSE1" version of its UbiquiCAST system, which only provides generic images and which Music Choice does not accuse of infringement in this case. (Dkt. No. 214, at 2).

c. History of AT&T and Liberty

Music Choice first secured AT&T's subscriber business in March 2011, when it agreed to provide music channels and videos for a monthly rate of $0.12 per residential subscriber. (*Id.*). After the term expired in 2014, they renewed the deal for one year but at a new rate of $0.0931 per residential subscriber. (*Id.*, at 3). When the new term ended in March 2015, AT&T switched to Stingray and its newly developed Music TV App, which had the same features and functionality as Music Choice's offerings, but at a lower price of $0.03 per residential subscriber. (*Id.*). While Stingray provided its Music TV App to multiple customers, only AT&T was provided a service accused of infringement. (Dkt. No. 192, at 5). In February 2018, AT&T, through its subsidiary, DirecTV,[3] re-signed with Music Choice at a lower rate than in 2014. (Dkt. No. 214, at 6 n.2).

Liberty Cable Vision of Puerto Rico ("Liberty") was another Music Choice customer. In March 2014, it switched its business to Stingray. Initially, it was provided the OSE1 version of the UbiquiCAST system, but starting in at least April 2016, Stingray began providing Liberty with the OSE2 version of the system. (*Id.*, at 3).

[3] While DirecTV is a subsidiary of AT&T, it has a substantially larger subscriber base. (Dkt. No. 214, at 5–6).

d. Dr. Ugone's Reports

Dr. Ugone submitted a damages report on September 27, 2017, and a post-stay supplemental report on April 12, 2019. (Dkt. No. 192, at 5). In the report, Dr. Ugone found that Music Choice suffered lost profits due to the loss of the AT&T and Liberty accounts caused by Stingray's alleged infringement of the Visual Complement Patent and VOD Linking Patents.

Dr. Ugone also calculated price erosion with respect to ten additional customers for whom Music Choice lowered its prices due to Stingray's alleged infringement of the VOD Linking Patents. In the supplemental report, Dr. Ugone updated the damages calculations, but his methodologies did not change. (*Id*., at 6).

Finally, Dr. Ugone prepared a report on commercial success of the '245 Patent in support of Music Choice's position that the patents-in-suit are non-obvious. He opined that the technology in the '245 Patent has been the subject of significant commercial success. (*Id*.).

II. STATEMENT OF LAW

An expert witness may provide opinion testimony if "(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the facts of the case." Fed. R. Evid. 702; *see also Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 149 (1999); *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 592–93 (1993)).

Under Rule 702 and *Daubert*, "a district court has broad discretion to determine whether a body of evidence relied upon by an expert is sufficient to support that expert's opinion." *Johnson v. Arkema*, 685 F.3d 452, 458–59 (5th Cir. 2012) (quoting *Knight v. Kirby Inland*

Marine Inc., 482 F.3d 347, 354 (5th Cir. 2007)). The court acts as a gatekeeper, ensuring that admitted evidence is sufficiently reliable and relevant. *Curtis v. M&S Petroleum, Inc.*, 174 F.3d 661, 668 (5th Cir. 1999) (citing *Daubert*, 509 U.S. at 597).

The expert opinion must be grounded in the methods and procedures of science—the opinion must go beyond unsupported speculation or subjective belief. *Daubert*, 509 U.S. at 590. The court's "focus, of course, must be solely on principles and methodology, not on the conclusions that they generate." *Id.* at 595. Vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence. *Id*. at 596.

III. DISCUSSION

Stingray moves to exclude three portions of Dr. Ugone's expert testimony and opinions. First, Stingray believes Dr. Ugone's opinions on lost profits regarding two Music Choice customers, Liberty and AT&T, are flawed. For the Liberty calculation, Stingray argues Dr. Ugone misapplied *Panduit* factor 2. For the AT&T calculation, Stingray argues that Dr. Ugone made the mistaken assumption that the applicable rate would remain constant. Second, Stingray argues that Dr. Ugone's opinions on price erosion are flawed since his calculation attributes the entire difference in contract prices to Stingray's alleged infringement. Third, Stingray argues that Dr. Ugone's opinions that Music Choice's patented products are commercially successful are flawed since Dr. Ugone allegedly cites to general financial data without identifying products or services to which the data corresponds.

a. Dr. Ugone's Opinions on Lost Profits

Dr. Ugone opines that Music Choice should be awarded a total of $15.69 million in lost profits associated with two customers who switched to Stingray—$0.83 million for Liberty and $14.86 million for AT&T.

To recover lost profits, the patentee bears the burden of proof to show a "reasonable probability that, 'but for' infringement, it would have made the sales that were made by the infringer." *Presidio Components, Inc. v. Am. Tech. Ceramics Corp.*, 875 F.3d 1369, 1380 (Fed. Cir. 2017) (quoting *Crystal Semiconductor Corp. v. TriTech Microelecs. Int'l, Inc.*, 246 F.3d 1336, 1353 (Fed. Cir. 2001)). "But-for" causation can be proven using the test given in *Panduit Corp. v. Stahlin Bros. Fibre Works, Inc.*, 575 F.2d 1152 (6th Cir. 1978). *Rite-Hite Corp. v. Kelley Co.*, 56 F.3d 1538, 1545 (Fed. Cir. 1995); *see also Versata Software, Inc. v. SAP Am., Inc.*, 717 F.3d 1255, 1264 (Fed. Cir. 2013).

The four-factor *Panduit* test requires the patentee to show: (1) demand for the patented product; (2) an absence of acceptable, non-infringing substitutes; (3) manufacturing and marketing capability to exploit the demand; and (4) the amount of profit that would have been made. *Panduit*, 575 F.2d at 1156. In a two-player market, where the patent owner and the infringer are the only suppliers of the product, causation may be inferred. *Lam, Inc. v. Johns-Manville Corp.*, 718 F.2d 1056, 1065 (Fed. Cir. 1983); *see also Livesay Window Co. v. Livesay Industries, Inc.*, 251 F.2d 469, 473 (5th Cir. 1958).

Stingray argues that Dr. Ugone's opinions are unreliable for his calculation of lost profits for both Liberty and AT&T. The Court will address these different customers separately below.

i. Dr. Ugone's calculation of lost profits regarding Liberty

Stingray questions Dr. Ugone's application of *Panduit* factor 2, which is "the absence of acceptable non-infringing substitutes." *Panduit*, 575 F.2d at 1156. Stingray states that Dr. Ugone's conclusion that "OSE1 is not an acceptable non-infringing substitute because of the 'importance of the features and benefits enabled by the Visual Complement Patent'" is flawed. (Dkt. No. 192, at 8). Stingray cites to *Presidio Components*, which states that the "correct inquiry under *Panduit*

is whether a non-infringing alternative would be acceptable compared to the patent owner's product, not whether it is a substitute for the infringing product." (*Id*. (citing *Presidio Components*, 875 F.3d at 1381)). Thus, Stingray argues, Dr. Ugone incorrectly compared Stingray's non-infringing product, OSE1, to Stingray's allegedly infringing product, OSE2, when he should have compared OSE1, Stingray's non-infringing product, to Music Choice's patented product, Audio Service. Stingray also argues that, if Dr. Ugone made the correct comparison, he would have determined OSE1 was an acceptable non-infringing substitute. (*Id*., at 8–9).

Music Choice counters that Dr. Ugone both made the correct comparison and found that OSE1 was lacking as a non-infringing alternative. (Dkt. No. 214, at 10–11). Music Choice argues that that "[t]he existence of other inferior products, like OSE1, is irrelevant, given that 'a "product on the market which lacks the advantages of the patented product can hardly be termed a[n] [acceptable] substitute."'" (*Id*, at 10 (quoting *Stryker Corp. v. Intermedics Orthopedics, Inc.*, 96 F.3d 1409, 1418 (Fed. Cir. 1996) (quoting *Standard Havens Prods., Inc. v. Gencor Indus., Inc.*, 953 F.2d 1360, 1371 (Fed. Cir. 1991)))). Music Choice explains that Dr. Ugone, in his report, shows that OSE1 lacked the commercially-desirable features that were present in both OSE2 and Audio Service, while also explaining why he considered the missing features to be a significant disadvantage of OSE1. (*Id*., at 11).

The Court concludes that Dr. Ugone's analysis of lost profits under the *Panduit* test is sufficiently reliable with respect to Liberty. Stingray has not sufficiently shown that Dr. Ugone's analysis here is so unreliable that exclusion is warranted. Instead, the arguments presented by Stingray are better suited for a jury.

ii. Dr. Ugone's calculation of lost profits regarding AT&T

Here, Stingray argues that Dr. Ugone's lost profits calculation is based on the false assumption that AT&T, had it not switched to Stingray, would have continued to pay Music Choice the same monthly subscriber rate throughout the entire period in question.[4] (Dkt. No. 192, at 9–10). Stingray argues that this allegedly false assumption makes the entire calculation speculative and unreliable. (*Id.*).

Stingray adds that "Dr. Ugone had failed to consider . . . the plethora of evidence demonstrating that monthly subscriber rates for music services" covered by the VOD Linking Patent varies. (*Id.*). It explains that Music Choice, in contract negotiations with AT&T, had lowered the rate it charged; that Stingray charged AT&T a significantly lower amount than Music Choice[5]; and that Music Choice executed a new contract with AT&T in February 2018, where they agreed to a lower rate.[6] (*Id.*). Stingray also argues that Music Choice's 2014 contract with AT&T covered more than just products involving the patents at issue in this case. Finally, Stingray argues that Dr. Ugone failed to consider that AT&T's competitors paid lower rates, which AT&T would have known, and that AT&T's subscriber counts were decreasing.

Music Choice argues that using "the actual contract rate negotiated between the parties just a year before the start of the damages period" is perfectly reasonable. (Dkt. No. 214, at 7). Music Choice adds that Stingray's expert did not challenge Dr. Ugone on this point, which shows the reasonableness of his choice. Music Choice also argues that Stingray's arguments go to the weight of the testimony, not its admissibility. Music Choice further argues that Dr. Ugone used a relatively conservative rate and that Dr. Ugone could have assumed multiple factors that would have led to

[4] This period ran from March 2015 to February 2018, when AT&T was a Stingray customer. (Dkt. No. 192, at 10).
[5] Stingray charged a monthly subscriber rate of $0.01. (Dkt. No. 192, at 10).
[6] Music Choice and AT&T, through its subsidiary DirecTV, agreed to a monthly subscriber rate of $0.0306. *Id.*

an increased rate. Finally, Music Choice addresses each of Stingray's criticisms, point by point. (*See id.*, at 8–10).

This Court finds that the former contract is relevant to the lost profit calculation. Further the Court concludes that using the former contract in the lost profit calculation is sufficiently reliable. Stingray's criticisms go to the weight, not admissibility, of Dr. Ugone's testimony. The issue of determining the weight that should be given to the 2014 contract rate is properly suited for the jury, as fact finder. *See Curtis*, 174 F.3d at 668 (citing *Daubert*, 509 U.S. at 597).

b. Dr. Ugone's Opinions on Price Erosion

Stingray argues that Dr. Ugone's price erosion opinions are flawed, speculative, and unreliable, and thus, should be excluded. Stingray contends that his calculation that Music Choice has suffered $7.44 million, collectively, in price erosion from 10 customers with whom Music Choice entered into agreements is too high. Stingray's main critique is that Dr. Ugone assumed "the ***entire difference*** between the monthly subscriber rate in the original contract and the rate in the extension" was solely due to Stingray's alleged infringement. (Dkt. No. 192, at 12–13).

"Reduction of prices, and consequent loss of profits, enforced by infringing competition, is a proper ground for awarding of damages. The only question is as to the character and sufficiency of the evidence in the particular case." *Yale Lock Mfg. Co. v. Sargent*, 117 U.S. 536, 551 (1886). The Federal Circuit has explained that "'the question as to the character and sufficiency of the evidence' places the burden on the patentee to show that 'but for' infringement, it would have sold its product at higher prices." *Crystal Semiconductor*, 246 F.3d at 1357 (quoting *Yale Lock*, 117 U.S. at 551). The patentee's price erosion theory must account for the nature, or definition, of the market, similarities between any benchmark market and the market in which price erosion is

alleged, and the effect of the hypothetically increased price on the likely number of sales at that price in that market. *Id*.

Stingray argues that Dr. Ugone gave too much weight to the entry of Stingray's allegedly infringing products without considering other possible reasons for the lower monthly subscriber rates that make up the base of Dr. Ugone's price erosion calculation. Specifically, Stingray argues that Dr. Ugone did not consider whether any of Stingray's non-infringing music services caused Music Choice to offer lower monthly rates to its customers. Further, it explains other potentially-influential factors, such as changes in the market, including a decline in subscriber counts, price elasticity, and whether Music Choice provided products and services not covered under the relevant patents. Finally, it argues that Dr. Ugone made an assumption that Stingray considers flawed—that price erosion can result from new agreements with Music Choice customers that Stingray did not approach, since "informed businesspeople know other pricing in the marketplace." (Dkt. No. 192, at 14).

Music Choice first counters Stingray's arguments by saying that the arguments take "issue with Dr. Ugone's conclusions, not his methodology." (Dkt. No. 214, at 11). Also, Music Choice explains that Dr. Ugone begins his analysis with contracts made after Stingray had entered the market but before Stingray's allegedly infringing products entered the market. Therefore, the presence of Stingray's non-infringing offerings on the market appears to be accounted for in Dr. Ugone's report. Lastly, it is plausible that Music Choice was compelled by market forces to offer the three unapproached customers lower prices to match the price it needed to give its seven approached customers. This conclusion is supported by Stingray's consultant, Mr. Decker, who stated that "at some point in time, everybody would have been offered Stingray Music." (Dkt. No. 192-2, at 57).

None of Stingray's objections to Dr. Ugone's report on price erosion convince this Court that his report is so flawed that it should not be presented to the jury, where it can be subject to "[v]igorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof. . . ." *Daubert*, 509 U.S. at 596.

c. Dr. Ugone's Opinions on Commercial Success

In support of Music Choice's claim that the Visual Complement Patent is not obvious, Dr. Ugone offered opinions that Music Choice's audio music channels are commercially successful. Stingray argues that Dr. Ugone cites to general financial data without identifying to which products or services the data corresponds. Thus, Stingray believes that Dr. Ugone's opinions relating to commercial success should be excluded as unreliable and based on a flawed methodology.

"The commercial [success of] an invention is significant to determinations of obviousness, and is entitled to fair weight." *Demaco Corp. v. F. Von Langsdorff Licensing Ltd.*, 851 F.2d 1387, 1391 (Fed. Cir. 1988). "When a patentee asserts that commercial success supports its contention of nonobviousness, there must . . . be a sufficient relationship between the commercial success and the patented invention." *Id.* at 1392. "A prima facie case of nexus is generally made out when the patentee shows both that there is commercial success, and that the thing (product or method) that is commercially successful is the invention disclosed and claimed in the patent." *Id.* "The judge, using ordinary reasoning, may determine that fact A might reasonably be inferred from fact B, and therefore that the party has satisfied his burden [of producing evidence], or as sometimes put by the courts, has made out a "prima facie" case." *Id*. (citing E.W. Cleary, *McCormick on Evidence* § 342 (3rd ed. 1984)).

Stingray agrees that Dr. Ugone has identified Music Choice's audio music channels as the service or product covered by the Visual Complement Patent but argues that he does not adequately demonstrate the success of Music Choice's audio music channels, themselves.

Music Choice counters by quoting this Court when it previously said, "[t]he nexus requirement goes primarily to the weight secondary considerations should be given, and the *Daubert* inquiry is one of admissibility rather than weight." *Genband US LLC v. Metaswitch Networks Corp.*, 2016 WL 98745, at *2 (E.D. Tex. Jan. 8, 2016) (citing *Primrose Operating Co. v. Nat'l Am. Ins. Co.*, 382 F.3d 546, 562 (5th Cir. 2004)). This Court went on to say, "[i]t is for the fact finder to determine the magnitude of the nexus that connects a given piece of evidence to the patents in suit and to give appropriate weight to that evidence. However, absent any nexus at all, the evidence cannot be entitled to any meaningful weight." *Id*.

The Court finds that a nexus between the commercial success of Music Choice and its Visual Complement Patent can be inferred from Dr. Ugone's expert report. Dr. Ugone's expert report on commercial success discusses not just the commercial success of Music Choice, but, specifically, the commercial success of Music Choice's Patented Visual Complement Technology. (*See* Dkt. No. 192-15, at 20–24). Consequently, "[i]t is for the fact finder to determine the magnitude of the nexus that connects a given piece of evidence to the patents in suit and to give appropriate weight to that evidence." *See Genband*, 2016 WL 98745, at *2.

IV. CONCLUSION

Stingray's *Daubert* motion (Dkt. No. 192) is therefore **DENIED**.

SIGNED this 24th day of October, 2019.

ROY S. PAYNE
UNITED STATES MAGISTRATE JUDGE

[redacted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

MUSIC CHOICE, *Plaintiff*, v. STINGRAY GROUP INC. (f/k/a STINGRAY DIGITAL GROUP INC.) and STINGRAY MUSIC USA, INC., *Defendants*.	Civil Action No. 2:16-cv-586-JRG-RSP (Lead Case) [redacted]

STINGRAY'S MOTION FOR SUMMARY JUDGMENT OF ESTOPPEL AS TO CLAIMS 10 AND 15 OF U.S. PATENT NO. 9,357,245

[redacted]

TABLE OF CONTENTS

I. INTRODUCTION 1

II. ISSUE PRESENTED 1

III. STATEMENT OF UNDISPUTED MATERIAL FACTS 1

A. The '245 Patent 1

B. Stingray's IPRs and Music Choice's Disclaimer and Request for Adverse Judgment 2

IV. LEGAL STANDARDS 4

V. ARGUMENT 5

A. Music Choice is Estopped from Asserting Infringement of Claims 10 and 15 Under 37 C.F.R. § 42.73(d)(3) 5

B. Music Choice is Estopped from Asserting Infringement of Claims 10 and 15 Under the Doctrine of Collateral Estoppel 9

VI. CONCLUSION 12

[redacted]

TABLE OF AUTHORITIES

Page(s)

Cases

Anthrex, Inc v. Smith & Nephew, Inc.,
880 F.3d 1345 (Fed. Cir. 2018).....5, 6

B & B Hardware,
135 S. Ct. 1293 (2015).....10

C.R. Bard, Inc. v. Advanced Cardiovascular Sys., Inc.,
911 F.2d 670 (Fed. Cir. 1990).....4

Celotex Corp. v. Catrett,
477 U.S. 317 (1986).....4

Fellowes, Inc. v. Acco Brands Corp.,
No. 10 CV 7587, 2019 WL 1762910 (N.D. Ill. Apr. 22, 2019).....11

Intellectual Ventures I, LLC v. Lenovo Grp. Ltd.,
370 F. Supp. 3d 251 (D. Mass. 2019).....11

MaxLinear, Inc. v. CF CRESPE LLC, 880 F.3d 1373, 1376 (Fed. Cir. 2018).....10

Nestle USA, Inc. v. Steuben Foods, Inc.,
884 F.3d 1350 (Fed. Cir. 2018).....10

Norwegian Bulk Transp. A/S v. Int'l Marine Terminals P'ship,
520 F.3d 409 (5th Cir. 2008).....4

Ohio Willow Wood Co. v. Alps S., LLC,
735 F.3d 1333 (Fed. Cir. 2013).....10

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778 F.3d 1311.....8, 9, 10, 11

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520 U.S. 17 (1997).....5

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890 F.3d 1282 (Fed. Cir. 2018).....10

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37 C.F.R. § 1.321(a).....3

[redacted]

[redacted]

37 C.F.R. § 42.72 4

37 C.F.R. § 42.73 ..... *passim*

Fed. R. Civ. P. 56 ..... 1, 4

[redacted]

I. INTRODUCTION

Pursuant to Fed. R. Civ. P. 56, Defendants Stingray Group Inc. and Stingray Music USA, Inc. (collectively, "Stingray") respectfully move for summary judgment of estoppel as to claims 10 and 15 of U.S. Patent No. 9,357,245 (the "'245 patent") (Ex. 1) under 37 C.F.R. § 42.73(d)(3) and/or the doctrine of collateral estoppel. As discussed below, adverse judgment was entered against Music Choice as to claims 1 and 12 of the '245 patent (among other claims) during an *inter partes* review ("IPR") proceeding. The only feature added by asserted claims 10 and 15, which depend from claims 1 and 12, respectively, is that the claimed video image is "encoded according to a Moving Pictures Experts Group (MPEG) standard" ('245 patent (Ex. 1) at claims 10 and 15) – something even Music Choice's own expert agrees was well-known at the time of the alleged invention. Claims 10 and 15 are therefore patentably indistinct from claims 1 and 12, respectively, so that Music Choice is estopped from asserting those claims against Stingray in this litigation.

II. ISSUE PRESENTED

1. Whether Music Choice is estopped from asserting infringement of claims 10 and 15 of the '245 patent as a result of the entry of adverse judgment against Music Choice as to claims 1 and 12, from which claims 10 and 15 depend, respectively.

III. STATEMENT OF UNDISPUTED MATERIAL FACTS

A. The '245 Patent

Music Choice filed its Complaint in this action on June 6, 2016, alleging that Stingray's system and method for delivering its linear audio cable television channels infringe the '245 patent. (Dkt. 1 at ¶ 40). The '245 patent generally relates to providing a visual complement, such as album art, to a digital audio stream. ('245 patent (Ex. 1) at Abstract; *id.* at 1:24-26, 4:54-62). According to the inventors, prior to the alleged invention, television cable systems offered music programming but the screen would be effectively blank while music was playing. (*Id.* at 1:28-46).

[redacted]

Thus, the inventors sought to make use of the unused screen space by providing visual information on the screen relating to the song being played. (*Id*. at Abstract, 1:28-48)

The solution claimed in independent claims 1 and 12 was to transmit to a receiving system a data packet that was generated using "an identifier identifying the selected song," wherein the data packet contains a "media asset identifier identifying a media assert" and "song information associated with the selected song, the song information comprising the title of the song and the name of the artist who recorded the song." (*Id.* at claims 1 and 12). After receiving the data packet, the receiving system "automatically generates a video image using the information included in the data packet and automatically outputs the generated video image such that it is received by a display device that is operable to display the video image to a user of the display device without the user having to select a menu item." (*Id.*) "[T]he generated video image includes the song information comprising the title of the song and the name of the artist." (*Id*.)

Claims 10 and 15 each recite only one limitation – that "the video image [of claims 1 and 12] is encoded according to a Moving Pictures Experts Group (MPEG) standard." (*Id.* at claims 10 and 15).

B. Stingray's IPRs and Music Choice's Disclaimer and Request for Adverse Judgment

In its original infringement contentions dated September 12, 2016, Music Choice asserted all claims of the '245 patent against Stingray. (Plaintiff Music Choice's Submissions Pursuant to Local Patent Rules 3-1 and 3-2 (Ex. 2) at Ex. 2).

On March 24, 2017, Music Choice sent an email to Stingray and noted that, "in the spirit of narrowing the issues," it would only be asserting claims 1, 2, 4, 9, 12, and 17. (Email from Music Choice's attorneys to Stingray's attorneys, dated March 24, 2017 (Ex. 3)).

[redacted]

On April 5, 2017, Stingray filed an IPR petition with respect to all of those claims (Petition for *Inter Partes* Review of Claims 1-9, 12, 14, and 16-17 of '245 Patent, IPR2017-01193 ("IPR Petition I") (Ex. 4) at 1). In IPR Petition I, Stingray argued that the claims were all anticipated by U.S. Patent No. 6,649,329 to Mackintosh ("Mackintosh") (Ex. 20). (IPR Petition I (Ex. 4) at 3).

On April 27, 2017, Music Choice served amended infringement contentions. (Ex. 5, Plaintiff Music Choice's First Amended Submissions Pursuant to Local Patent Rules 3-1 and 3-2 Disclosures ("Amended Infringement Contentions") (Ex. 5)). In its Amended Infringement Contentions, Music Choice altered its list of asserted claims from the '245 patent. (*Id.*) Specifically, Music Choice indicated that it was no longer asserting claim 9, and that it was adding claims 10 and 15 as asserted claims. (Email from Music Choice's attorneys to Stingray's attorneys, dated April 27, 2017 (Ex. 21); *see also* Amended Infringement Contentions (Ex. 5) at First Amended Exhibit 2 at 14-15, 28-29)). However, because claims 10 and 15 were not asserted as of the time Stingray filed IPR Petition I, those claims were not included in IPR2017-01193.

On October 13, 2017, the PTAB issued an institution decision in IPR2017-01193, concluding that it was reasonably likely that claims 1-9, 12-14, 16 and 17 of the '245 patent were invalid as anticipated by Mackintosh. (Patent Trial and Appeal Board's Decision, Institution of *Inter Partes* Review, IPR2017-01193 ("Institution Decision") (Ex. 6) at 22).

On October 23, 2017, Stingray filed a second IPR petition – this one with respect to claims 10 and 15 – along with a motion to join that second petition with IPR2017-01193. (Petition for *Inter Partes* Review of Claims 1-10 and 12-17 of U.S. Patent No. 9,357,245, IPR2018-00114 (Ex. 7) at 4; Petitioner's Motion for Joinder Pursuant to 35 U.S.C. § 315(c) and 37 C.F.R. §§ 42.22 and 42.122(b) (Ex. 8)).

[redacted]

On October 24, 2017, pursuant to 37 C.F.R. § 1.321(a), Music Choice filed with the United States Patent and Trademark Office a disclaimer with respect to claims 1-9, 12-14, 16 and 17 of the '245 patent. (Music Choice's Disclaimer in Patent Under 37 CFR 1.321(a) (Ex. 9) at 1).

On that same day, Music Choice submitted to the PTAB a notice of disclaimer, along with a request under 37 C.F.R. § 42.73(b) for "adverse judgment against itself" in the pending IPR2017-01193. (Music Choice's Notice Regarding Filing of Disclaimer of Claims a Patent Under 37 C.F.R. § 1.321(a), IPR2017-01193 (Ex. 10) ("Notice of Disclaimer") at 1).

On March 26, 2018, the PTAB denied Stingray's motion for joinder. (Patent Trial and Appeal Board's Decision Denying Institution of *Inter Partes* Review and Denying Motion for Joinder, IPR2018-00114 (Ex. 11)).

On April 26, 2018, the PTAB issued a Judgment in IPR2017-01193, in which adverse judgment was entered against Music Choice pursuant to 37 C.F.R. § 42.73(b) and the trial was terminated pursuant to 37 C.F.R. § 42.72. (Judgment, IPR2017-01193 ("Adverse Judgment") (Ex. 12)).

As a result, the only remaining claims in the '245 patent are claims 10 and 15, which each recite only that "the video image [of claims 1 and 12] is encoded according to a Moving Pictures Experts Group (MPEG) standard." ('245 patent (Ex. 1) at claims 10 and 15).

IV. LEGAL STANDARDS

A grant of summary judgment is proper if the pleadings and evidence show that "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986); *Norwegian Bulk Transp. A/S v. Int'l Marine Terminals P'ship*, 520 F.3d 409, 411 (5th Cir. 2008).

[redacted]

"Summary judgment is as appropriate in a patent case as it is in any other case." *C.R. Bard, Inc. v. Advanced Cardiovascular Sys., Inc.*, 911 F.2d 670, 672 (Fed. Cir. 1990).

When the summary judgment movant demonstrates the absence of a genuine dispute over any material fact, the burden shifts to the non-movant to show there is a genuine factual issue for trial. *Celotex*, 477 U.S. at 323-24. When a claim limitation is not present in an accused device, either literally or under the doctrine of equivalents, the court must grant summary judgment of non-infringement. *See Warner-Jenkinson Co. v. Hilton Davis Chem. Co.*, 520 U.S. 17, 39 n.8 (1997).

V. ARGUMENT

A. Music Choice is Estopped from Asserting Infringement of Claims 10 and 15 Under 37 C.F.R. § 42.73(d)(3)

Pursuant to 37 C.F.R. § 42.73(b), "[a] party may request judgment against itself at any time during a proceeding." An adverse judgment in an IPR is final, as the judgment terminates the proceeding. *Anthrex, Inc v. Smith & Nephew, Inc.,* 880 F.3d 1345, 1348 (Fed. Cir. 2018). Upon the entering of an adverse judgment against a party, an estoppel effect attaches which precludes a patent owner "from taking action inconsistent with the adverse judgment." *Id.* at 1347 (citing 37 C.F.R. § 42.73(d)(3)(i)). 37 C.F.R. § 42.73(b) defines the circumstances in which the estoppel provision of 37 C.F.R. § 42.73(d)(3) applies. The purpose of the estoppel provision is to "provide[] estoppel against claims that are patentably indistinct from those claims that were lost." *Anthrex*, 880 F.3d at 1350. (citing Rules of Practice for Trials Before the Patent Trial and Appeal Board and Judicial Review of Patent Trial and Appeal Board Decisions, 77 Fed. Reg. 48,612, 48,649 (Aug. 14, 2012)).

Because adverse judgment was entered against it as to claims 1 and 12 (among other claims) in IPR2017-01193, Music Choice is estopped from asserting infringement of claims 10

[redacted]

and 15, which are patentably indistinct from claims 1 and 12, respectively. Indeed, the only limitation included in claims 10 and 15 is that "the video image [of claims 1 and 12] is encoded according to a Moving Pictures Experts Group (MPEG) standard" ('245 patent (Ex. 1) at claims 10 and 15) – something which Music Choice's own expert agrees was obvious and known to those skilled in the art. (Deposition Transcript of Samuel Russ, dated May 8, 2019 ("Russ Tr.") (Ex. 13) at 135:5-21; Declaration of Dr. Samuel H. Russ in Support of Music Choice's Opening Claim Construction Brief ("Russ Declaration") (Ex. 14) at ¶ 103)).

As discussed above, following the issuance of the PTAB's Institution Decision in IPR2017-01193, in which the PTAB concluded that it was reasonably likely that claims 1 and 12 of the '245 patent (among other claims) were invalid as anticipated by Mackintosh, Music Choice disclaimed those claims and requested that "adverse judgment [be entered] against itself" in the IPR (Notice of Disclaimer (Ex. 10) at 1). The PTAB then entered adverse judgment against Music Choice (Adverse Judgment (Ex. 12) at 3), so that, pursuant to 37 C.F.R. § 42.73(d)(3), Music Choice is now "precluded from taking action inconsistent with the adverse judgment." This includes asserting claims "that are patentably indistinct from those claims that were lost." *Anthrex*, 880 F.3d at 1350.

There can be no genuine dispute that claims 10 and 15 – which recite only that the video image of claims 1 and 12 is encoded according to MPEG – are patentably indistinct from, and are obvious over, claims 1 and 12, respectively. The addition of the MPEG encoding step does not materially alter the invalidity analysis. According to Dr. Russ, Music Choice's technical expert, "MPEG-formatted video is used by all major digital television transmission standards, including cable, over-the-air, direct-broadcast satellite, and over phone lines, and would have been used as of the time of the invention." (Russ Declaration (Ex. 14) at ¶ 103). Dr. Russ further states that

[redacted]

"[o]ne of skill would clearly understand that [the '245 patent] describes television transmission, and as such, would not exclude the most common format of television transmission [MPEG]." *Id.*

Dr. Russ confirmed his opinions during his deposition. For example, he testified that, at the time of the alleged invention of the '245 patent, "[digital cable companies] were encoding television content using MPEG." (Russ Tr. (Ex. 13) at 124:17-25). In addition, he stated that "MPEG was what was used as of the time of the invention." (*Id*. at 130:5-10; *see also id*. at 135:17-21 ("one would understand that the patent describes television transmission and so one would not exclude from the definition of image, the fact that MPEG is an option for encoding an image.")).

Similarly, Dr. Shamos, Stingray's expert, discussed numerous prior art references to the '245 patent that disclose encoding video images according to MPEG and then transmitting those encoded images to a receiving station. (Invalidity Report of Michael Shamos, Ph.D. ("Shamos Report") (Ex. 15) at ¶¶ 133, 206, 218, 230, 244, 250 and 257). For example, U.S. Patent No. 5,777,997 ("Kahn") (Ex. 16) discloses compressing digital video using MPEG-2 type compression:

> The processing of the signals received by the music provider source 20 occurs as follows. The digital video from other providers and audio signals from provider source 20 are routed to the uplink facility 28 for compression, encryption, and multiplexing with control data before transmission. The resulting digital data streams are compressed into approximately 3.5-7.5 Mbps digital compressed data stream using an MPEG-2 type compression scheme.

(Shamos Report (Ex. 15) at ¶ 133; citing Kahn (Ex. 16) at 3:44-51). Likewise, in December 1999, Cosmas *et al.* published an article titled, "CustomTV with MPEG-4 and MPEG-7" ("Cosmas") (Ex. 17) which discloses the transmission of television channels using MPEG:

> CustomTV relies on three main technologies: MPEG-2 for transport of existing normal TV channels and private data, MPEG-4 for the broadcasting and manipulation of multimedia information in order to support "object based interactivity" and MPEG-7, currently being

[redacted]

> developed, for the transmission of indexing and filtering information in order to enable "programme and subprogramme selections."

(Shamos Report (Ex. 15) at ¶ 184; citing Cosmas (Ex. 17) at 9/1). U.S. Patent No. 7,870,592 ("Hudson") (Ex. 18) also discloses the use of MPEG (Shamos Report (Ex. 15) at ¶ 230 (citing Hudson (Ex. 18) at 4:44-45 ("Video content is preferably encoded as ASF, MPEG4 files to take advantage of encryption opportunities"))), as does U.S. Patent Application 09/904409 ("Schrader") (Ex. 19), and U.S. Patent No. 8,024,766 ("Addington") (Ex. 22). (Shamos Report (Ex. 15) at ¶ 244 (citing Schrader (Ex. 19) at p. 10, lines 1-3 ("In one embodiment of the invention, television programming is provided through a digital cable system that delivers multiple channels of video data in a compressed format, such as MPEG II format."))); *see also id.* at ¶ 250 (citing Addington (Ex. 22) at 5:39-48 ("In one exemplary embodiment, the real time encoder 210b receives analog audio and video broadcast streams and converts the analog audio and video streams into Moving Picture Experts Group (MPEG) video and Dolby audio files.")).

The facts of this case are strikingly similar to those in *Soverain Software LL v. Victoria's Secret Direct Brand Management*, LLC, 778 F.3d 1311 (Fed. Cir. 2015). In that case, the previously adjudicated claim in a prior case brought by the plaintiff, required "transmitting a hypertext statement," while the unadjudicated claim required "transmitting a hypertext statement *over the Internet*." *Soverain Software,* 778 F.3d at 1319 (emphasis added). The Court held that "[t]he additional limitation here—transmitting a hypertext statement over the Internet, rather than over a generic network—does not materially alter the question of the validity of claim 39." *Id.* In other words, "the routine incorporation of Internet technology . . . does not change the invalidity analysis." *Id*. at 1320. "The patentee 'did not invent the Internet, or hypertext, or the URL.'" *Id.* at 1319 (quoting *Soverain Software LLC v. Newegg Inc.*, 705 F.3d 1333, 1343 (Fed. Cir. 2013)).

[redacted]

Similarly, here, the fact that claims 10 and 15 of the '245 patent require encoding using MPEG – a routine operation known at the time of the alleged invention – does not change the invalidity analysis conducted in the IPR. Music Choice's expert confirmed during his deposition that Music Choice did not invent MPEG encoding.

> Q. Music Choice did not invent MPEG compression; right?
>
> A. Music Choice, while on one hand they did not intend (sic) MPEG compression. On the other hand they exploited it very, very creatively to create this product original.

(Russ Tr. (Ex. 13) at 194:9-14).

Accordingly, MPEG encoding was conventional at the time of the alleged invention of the '245 patent (Shamos Report (Ex. 15) at ¶ 257), was obvious to one of ordinary skill in the art, and fails to render claims 10 and 15 patentably distinct from claims 1 and 12 from which they respectively depend.

For these reasons, Music Choice is estopped from asserting infringement of claims 10 and 15 against Stingray in this litigation under 37 C.F.R. § 42.73(d)(3).

B. Music Choice is Estopped from Asserting Infringement of Claims 10 and 15 Under the Doctrine of Collateral Estoppel

Music Choice is also estopped from asserting claims 10 and 15 under the doctrine of collateral estoppel (or issue preclusion).

The law of the regional circuit is applied to the general procedural question of whether collateral estoppel (also known as issue preclusion) applies. *Soverain Software*, 778 F.3d at 1314 (citing *RF Del., Inc. v. Pac. Keystone Techs., Inc.*, 326 F.3d 1255, 1261 (Fed. Cir. 2003)). On the other hand, Federal Circuit precedent is applied "to questions involving substantive issues of patent law, issues of issue preclusion that implicate substantive patent law issues, or issues of issue preclusion that implicate the scope of [] previous [Federal Circuit] decisions." *Soverain Software*,

[redacted]

778 F.3d at 1314 (citing *Ohio Willow Wood Co. v. Alps S.*, LLC, 735 F.3d 1333, 1342 (Fed. Cir. 2013)).

Under Fifth Circuit law, collateral estoppel applies when: (1) the issue under consideration in a subsequent action is identical to the issue litigated in the prior action; (2) the issue has been fully and vigorously litigated in the prior action; (3) the issue was necessary to support the judgment in the prior case; and (4) there are no special circumstances that would render preclusion inappropriate or unfair. *See Soverain Software*, 778 F.3d at 1315.

The Supreme Court has made clear that issue-preclusion principles apply in a district court case even when the first "action" was before an agency if the agency proceeding meets certain standards. *B & B Hardware*, 135 S. Ct. 1293, 1303 (2015). Following the Supreme Court's conclusion in *B & B Hardware* that those standards are met by certain adversarial proceedings before the Trademark Trial and Appeal Board, the Federal Circuit has held that the same is true of an IPR proceeding before the Patent Trial and Appeal Board, so that the issue preclusion doctrine can apply in district court to the Patent Trial and Appeal Board's decision in an IPR once it becomes final. *MaxLinear, Inc. v. CF CRESPE LLC*, 880 F.3d 1373, 1376 (Fed. Cir. 2018); *see also XY, LLC v. Trans Ova Genetics*, 890 F.3d 1282, 1294 (Fed. Cir. 2018); and *Nestle USA, Inc. v. Steuben Foods, Inc.*, 884 F.3d 1350, 1351 (Fed. Cir. 2018).

For the reasons discussed below, the conditions for issue preclusion are met in the present case.

First, the issue under consideration in this action is identical to the issue litigated in IPR2017-01193. As discussed above, the issue litigated in the IPR proceeding was the validity of claims 1 and 12 (among other claims) in view of Mackintosh. (IPR Petition I (Ex. 4) at 3). Here, the issue is the validity of claims 10 and 15, which depend from claims 1 and 12, respectively.

[redacted]

While those claims are not identical, "[Federal Circuit] precedent does not limit collateral estoppel to patent claims that are identical." *Ohio Willow Wood*, 735 F.3d at 1342. "If the differences between the unadjudicated patent claims and adjudicated patent claims do not materially alter the question of invalidity, collateral estoppel applies." *Id.*

Here, the only difference between claims 1 and 12 and claims 10 and 15, respectively, is the requirement that the video image of claims 1 and 12 be encoded according to MPEG. However, as discussed above in Section V.A., at the time of the alleged invention, encoding video using MPEG was conventional, was well-known to those skilled in the art, and was obvious to those of ordinary skill in the art. In fact, Music Choice's own expert has stated that "MPEG-formatted video is used by all major digital television transmission standards, including cable, over-the-air, direct-broadcast satellite, and over phone lines, and would have been used as of the time of the invention." (Russ Declaration (Ex. 14) at ¶ 103). Therefore, the addition of the MPEG encoding step does not materially alter the invalidity analysis. *See Soverain Software*, 778 F.3d at 1319 (holding that "[t]he additional limitation here—transmitting a hypertext statement over the Internet, rather than over a generic network—does not materially alter the question of the validity"); *Intellectual Ventures I, LLC v. Lenovo Grp. Ltd.*, 370 F. Supp. 3d 251 (D. Mass. 2019) ("the addition of microprocessors and a memory device does not materially alter the invalidity analysis"); *Fellowes, Inc. v. Acco Brands Corp.*, No. 10 CV 7587, 2019 WL 1762910, at *4–5 (N.D. Ill. Apr. 22, 2019) (holding that the addition of an "immediately" stopping limitation and a limitation reciting the purpose of such stoppage to an invalidated claim were "insufficient to constitute a material difference.").

Second, the validity issue was fully and vigorously litigated in the prior action. "Under issue preclusion law generally and under both [Federal Circuit] law and Fifth Circuit law, a judgment of invalidity will not have a preclusive effect if a patentee can demonstrate that it did not

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have a full and fair opportunity to litigate the issue." *Soverain Software*, 778 F.3d at 1315-16 (citing *Blumcraft of Pittsburgh v. Kawneer Co.*, 482 F.2d 542, 546-47 (5th Cir. 1973)). Music Choice cannot demonstrate that here, since it had the opportunity to litigate the validity issue, and indeed did litigate the issue, in the IPR. That Music Choice conceded the issue by requesting adverse judgment does not change this fact. By entering judgment against Music Choice pursuant to 37 C.F.R. § 42.73, all issues in the case were fully disposed. 37 C.F.R. § 42.73(a) ("A judgment, except in the case of a termination, disposes of all issues that were, or by motion reasonably could have been, raised and decided.").

Third, the invalidity issue was necessary to support the adverse judgment in the IPR. In the IPR proceeding, the only possible adverse judgment the PTAB could enter is one that the claims at issue are not patentable. And, the only grounds on which the PTAB could reach such a conclusion were those presented by Stingray in its Petition, namely, that the claims are anticipated by Mackintosh. Thus, the invalidity of the claims in view of Mackintosh – the issue presented in this case – was necessary to support the adverse judgment.

Lastly, Stingray is aware of no special circumstances that would render preclusion inappropriate or unfair in this case.

Accordingly, Music Choice is estopped from asserting infringement of claims 10 and 15 against Stingray in this litigation under the doctrine of collateral estoppel.

VI. CONCLUSION

For all of the foregoing reasons, Stingray respectfully requests that the Court grant its motion for summary judgment of estoppel as to claims 10 and 15 of the '245 patent.

[redacted]

Dated: May 31, 2019

Respectfully submitted,

GREENBERG TRAURIG, LLP

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[redacted]

CERTIFICATE OF SERVICE

The undersigned certifies that on this 31st day of May 2019, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document by electronic mail under Local Rule CV-5(d).

/s/ Joshua L. Raskin
Joshua L. Raskin

CERTIFICATE OF AUTHORIZATION TO FILE UNDER SEAL

Pursuant to Local Rule 5(a)(7)(A), the undersigned hereby certifies that the corresponding documents were filed under seal pursuant to the Court's First Amended Stipulated Protective Order (Dkt. No. 132).

/s/ Joshua L. Raskin
Joshua L. Raskin

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

MUSIC CHOICE, Plaintiff, v. STINGRAY DIGITAL GROUP INC. STINGRAY MUSIC USA, INC. Defendants.	)	C.A. No. 2:16-CV-0586-JRG-RSP **Jury Trial Demanded**

PLAINTIFF MUSIC CHOICE'S SUBMISSIONS PURSUANT TO LOCAL PATENT RULES 3-1 AND 3-2

Pursuant to the Local Patent Rules of the Eastern District of Texas, Plaintiff Music Choice ("MC") serves on defendants Stingray Digital Group Inc. and Stingray Music USA, Inc. (collectively "Stingray") the materials required by Rules 3-1 and 3-2 as follows.

RULE 3-1 – DISCLOSURE OF ASSERTED CLAIMS AND INFRINGEMENT CONTENTIONS

In accordance with Rule 3-1(a) and (b), the accused products and methods in this case (i) are the Stingray Music multi-platform systems and services, including the Stingray Music app, that provide digital audio music channels and music videos on demand through cable operator, satellite, Internet Protocol television (IPTV), mobile, and/or website platforms ("Stingray Music System/Method"), and (ii) are used, sold and/or offered for sale in, and/or imported into, the United States.

As required by Rules 3-1(a) and (c), claim charts showing "[e]ach claim of each patent in suit that is allegedly infringed by each opposing party" and "identifying specifically where each element of each asserted claim is found within each" accused system and method are attached as

MC-EGLA-000872
Stingray Ex. 1009
Page 1300 of 1912 (IPR2025-00350)
Stingray Group Inc. et al v. Hernandez-Mondragon

Exhibits 1-5. As required by Rule 3-1(b), and based on information currently available to MC, the claim charts show that the Stingray Music System/Method literally infringes each of the asserted claims.

MC's infringement contentions regarding both the system and method claims are based on the information available to MC at this time, including data and inferences reasonably drawn from material regarding the Stingray Music System/Method that is available to MC from public sources. MC reserves the right to amend and revise these contentions as additional information becomes available to MC, through discovery or otherwise.

The claim charts are directed to an exemplary Stingray Music TV app that is offered on the AT&T U-verse® platform and exemplary Stingray Music mobile app that is offered on the iOS platform. However, all Stingray Music Systems/Methods that are similar in structure, function, and/or operation as the exemplary Stingray Music TV app offered on the AT&T U-verse® platform or the exemplary Stingray Music mobile app offered on the iOS platform are accused systems and methods (hereinafter included within the "Stingray Music System/Method").

In accordance with Rule 3-1(e), the claims in the patents-in-suit, U.S. Patent No. 8,769,602 ("the '602 Patent"), U.S. Patent No. 9,357,245 ("the '245 Patent"), U.S. Patent No. 7,320,025 ("the '025 Patent"), U.S. Patent No. 9,351,045 ("the '045 Patent"), and U.S. Patent No. 9,414,121 ("the '121 Patent") are entitled to the priority dates of an earlier patent application, as follows:

Patent	Claims	Priority Date
'602 Patent	All asserted claims	August 28, 2001
'245 Patent	All asserted claims	August 28, 2001

Patent	Claims	Priority Date
’025 Patent	All asserted claims	December 3, 2004
’045 Patent	All asserted claims	December 3, 2004
’121 Patent	All asserted claims	December 3, 2004

MC reserves the right to assert a priority date based on conception and reduction to practice of the claimed inventions before the dates set forth above.

Finally, MC reserves the right to rely, for any purpose, on the assertion that its own products, devices, processes, or acts practice the claimed inventions. In accordance with Rule 3-1(f), MC identifies that its multi-platform video and music network, including the MC Music Channels (“Music Channels”) and MC Video on Demand (“VOD”) systems and methods, that provide digital audio music channels and music videos on demand through cable operator, satellite, Internet Protocol television (IPTV), mobile, and/or website platforms (“MC System/Method”) practice the following claims (grouped by the patents-in-suit):

Patent	Claims Practiced by MC
’602 Patent	All asserted claims
’245 Patent	All asserted claims
’025 Patent	All asserted claims
’045 Patent	All asserted claims
’121 Patent	All asserted claims

RULE 3-2: DOCUMENTS ACCOMPANYING INFRINGEMENT CONTENTIONS

MC's disclosures, as required by Local Patent Rules 3-2(a), (b) and (c), are included on the DVD served on defendants by FedEx as specified in the Certificate of Service. The documents produced in accordance with Rules 3-2(a), (b), and (c) are throughout Bates range MC-Stingray00000001-MC-Stingray00119554. **Pending entry of a protective order in this lawsuit, MC designates each of the documents in this production "*Confidential: Outside Attorneys' Eyes Only*."**

MC reserves the right to use any document for any permitted purpose.

DATED: September 12, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of September, 2016, a true and correct copy of the foregoing PLAINTIFF MUSIC CHOICE'S SUBMISSIONS PURSUANT TO LOCAL PATENT RULES 3-1 AND 3-2 were served by electronic mail, upon the following counsel of record:

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EXHIBIT 1

Stingray's Infringement of the '602 Patent

UNITED STATES PATENT NO. 8,769,602 ("the '602 Patent")

This portion of Plaintiff's infringement contentions refers to the Stingray Music TV app that is offered on the AT&T's U-verse® platform and the Stingray Music mobile app that is offered on Apple's iOS platform as exemplary. These contentions apply to all similar Stingray Music products and services as offered on other platforms[1] (collectively the "Stingray Music System/Method").

#	'602 Patent	Stingray Music System/Method
1a	1. A method for providing a visual complement to an audio stream, comprising:	The Stingray Music Method, using the Stingray Music TV app on AT&T's U-verse® platform and/or the Stingray Music mobile app on Apple's iOS platform, is a method for providing a visual complement to an audio stream (*e.g.*, providing a song title, artist name, and/or album cover image as a visual complement to a song).

[1] These platforms include, for example, cable operator, satellite, Internet Protocol television (IPTV), mobile, and/or website platforms.

Exhibit 1: Stingray's Infringement of the '602 Patent

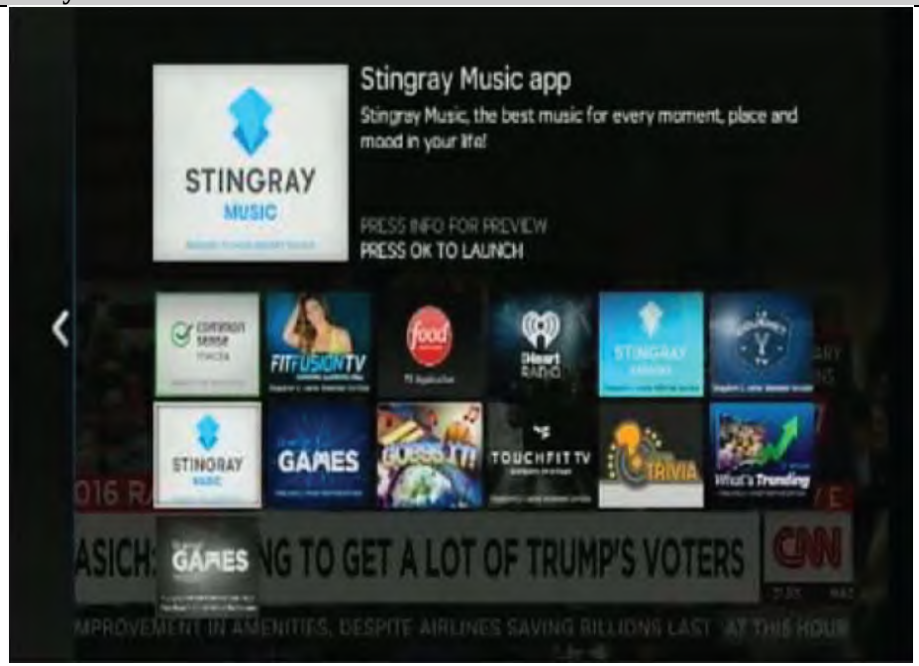
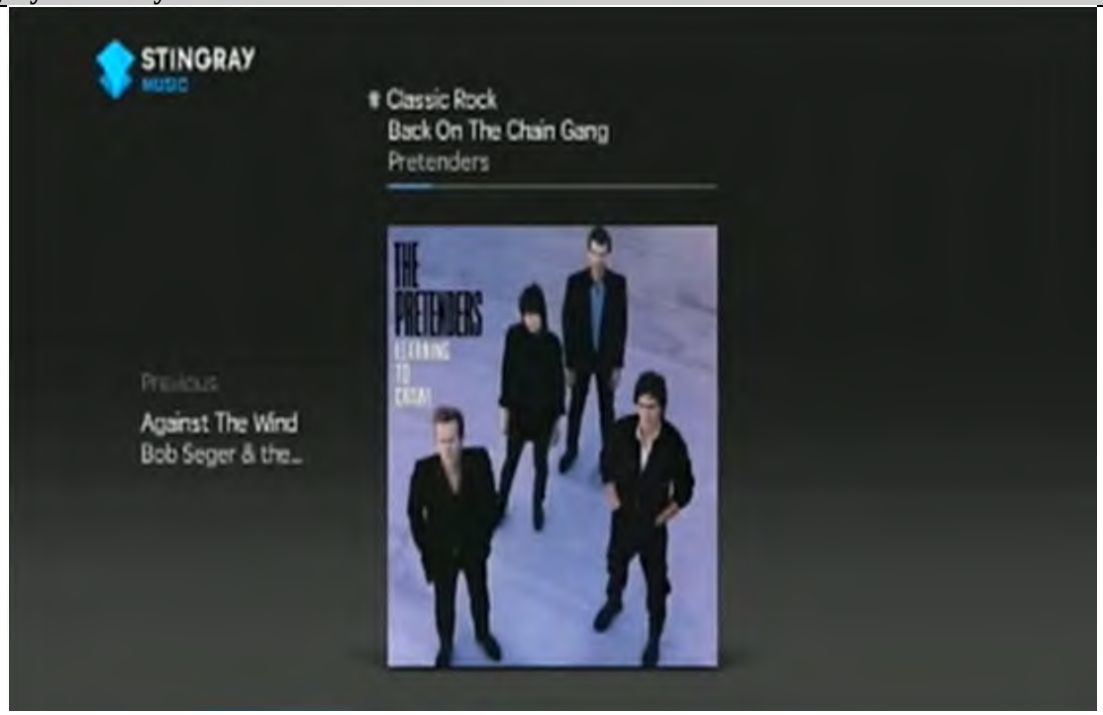
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Exhibit 1: Stingray's Infringement of the '602 Patent

#	'602 Patent	Stingray Music System/Method
		

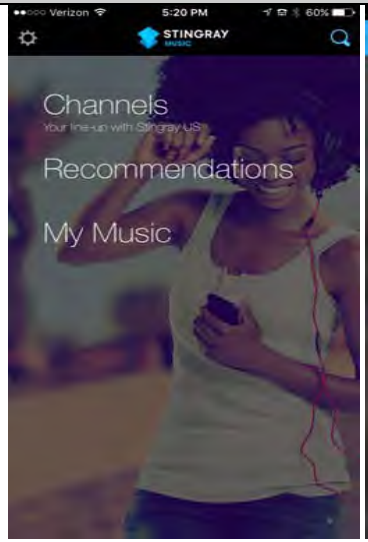
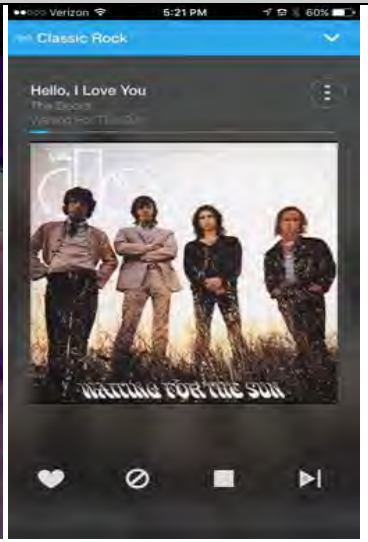
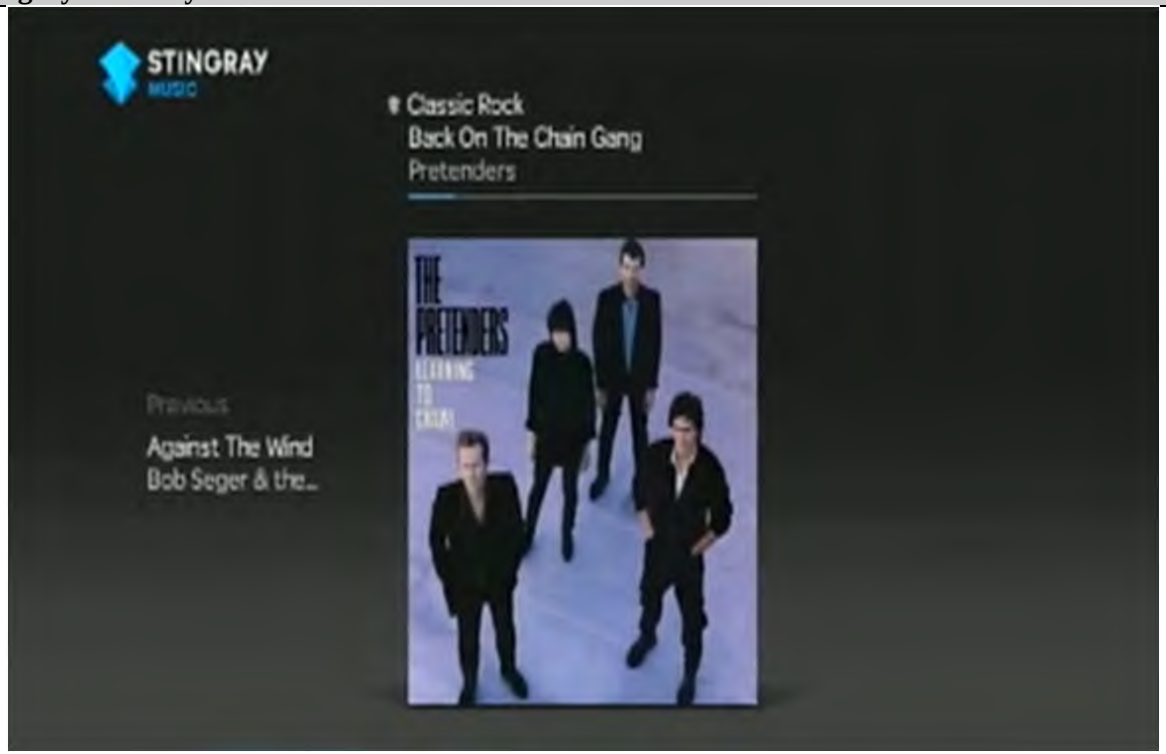
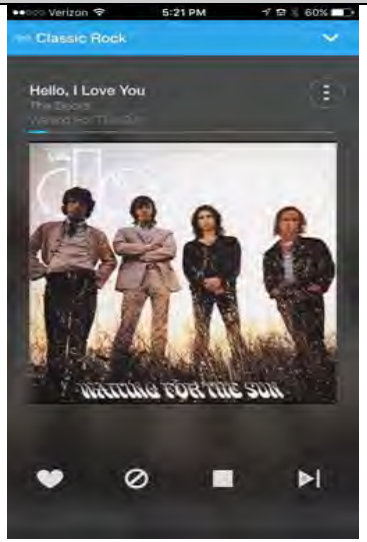
#	'602 Patent	Stingray Music System/Method
		 
1b	transmitting, from a first transmission system to a second transmission system, audio data corresponding to a sound recording; and	The Stingray Music Method transmits, from a first transmission system (*e.g.*, the Stingray UbiquiCAST broadcast system, including the UbiquiCAST music content origin server) to a second transmission system (*e.g.*, the AT&T U-verse® system, a cellular system, and/or a Local Area Network (LAN)/Wide Area Network (WAN) system), audio data corresponding to a sound recording (*e.g.*, audio data corresponding to the sound recording "Back on the Chain Gang" or "Hello, I Love You"). *See, e.g.*, Stingray Music Website, "Distribute Stingray Music," available at http://music.stingray.com/en_US/about/distribute (last accessed August 4, 2016) ("A UbiquiCAST server is installed at the head-end of our customers and comes pre-loaded with a library of content . . .") (MC-Stingray00119562).

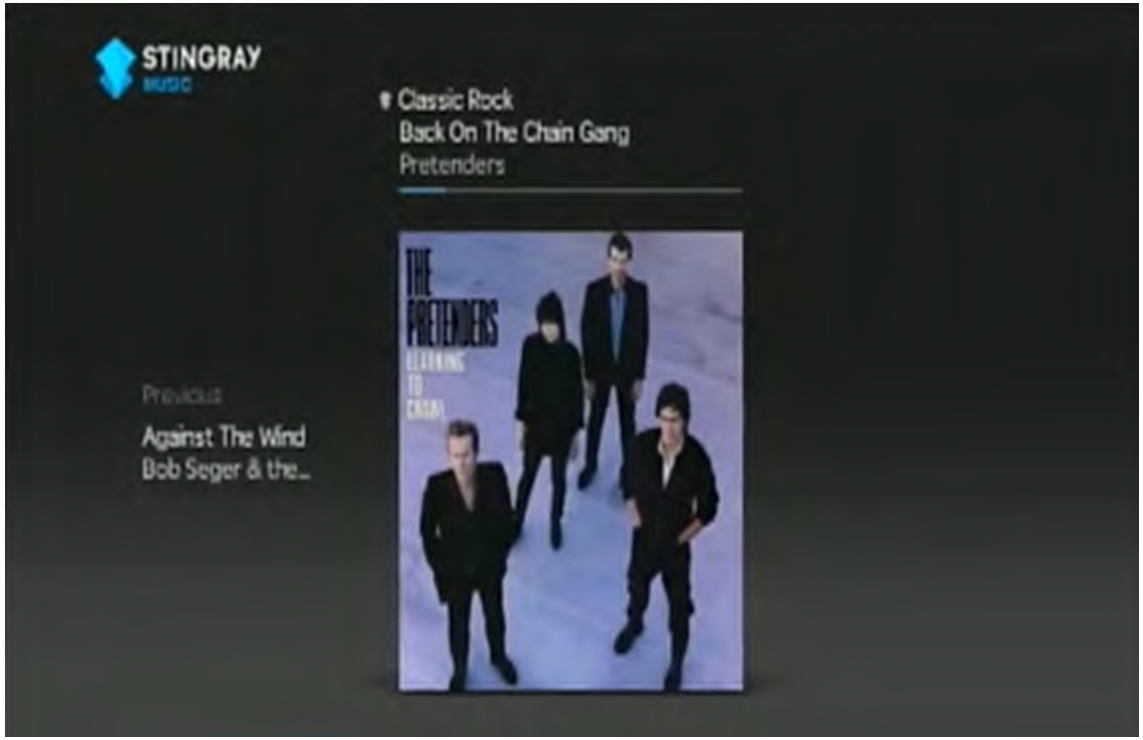
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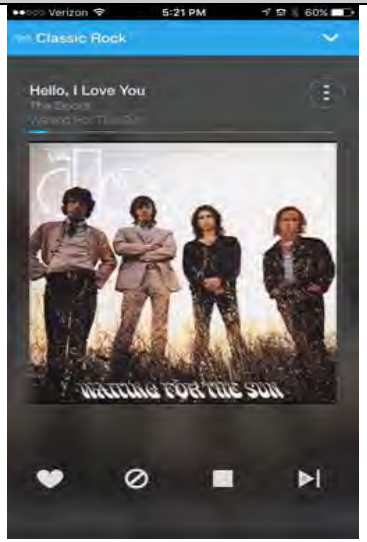
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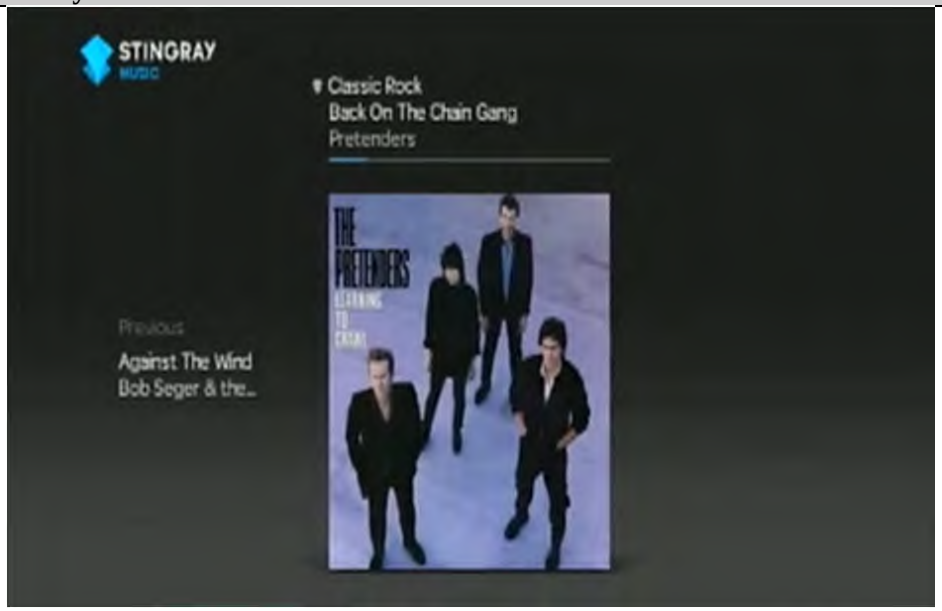
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MC-EGLA-000382

#	'602 Patent	Stingray Music System/Method
		
1c	transmitting a data packet comprising a video image specification while the audio data is being transmitted, wherein the video image specification specifies one or more media asset identifiers, each of which identifies a media asset associated with the sound recording, said data packet	The Stingray Music Method transmits a data packet (*e.g.*, an HTML or XML file) comprising a video image specification (*e.g.*, specifying (i) the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image or (ii) the song title "Hello, I Love You," the artist name "The Doors," and the associated cover art image) while the audio data (*e.g.*, audio data corresponding to the sound recording "Back on the Chain Gang" or "Hello, I Love You") is being transmitted, wherein the video image specification specifies one or more media asset identifiers (*e.g.*, (i) an identifier of the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image or (ii) an identifier of the song title "Hello, I Love You," the artist name "The Doors," and the associated cover art image), each of which identify a media asset associated with the sound recording (*e.g.*, (i) the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image associated with the sound recording "Back on the Chain Gang" or (ii) the song title "Hello, I Love You," the artist name "The Doors," and the associated cover art image associated with the sound recording "Hello, I Love You"), said data packet further comprising sound recording information associated with the sound recording, the sound recording information comprising one or more of the title of the sound recording (*e.g.*, "Back on the Chain Gang" or "Hello, I Love You") and the name of the artist who recorded the sound recording (e.g., the "Pretenders" or

#	'602 Patent	Stingray Music System/Method
	further comprising sound recording information associated with the sound recording, the sound recording information comprising one or more of the title of the sound recording and the name of the artist who recorded the sound recording, wherein	"The Doors"). 

#	'602 Patent	Stingray Music System/Method
		
1d	the step of transmitting the data packet comprises transmitting the data packet to a system comprising a video image generator, wherein the video image generator is configured to generate a video image using the video image specification and	The Stingray Music Method transmits the data packet (*e.g.*, the HTML or XML file) to a system (*e.g.*, the UbiquiCAST broadcast system and/or the AT&T U-verse® system and/or the cellular system and/or a LAN/WAN system, including an end-user device running the Stingray Music app) comprising a video image generator, wherein the video image generator is configured to generate a video image (*e.g.*, (i) a video image including the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image or (ii) a video image including the song title "Hello, I Love You," the artist name "The Doors," and the associated cover art image) using the video image specification and the system is configured to provide the generated video image (*e.g.*, (i) the video image including the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image or (ii) the video image including the song title "Hello, I Love You," the artist name "The Doors," and the associated cover art image) to a device that is operable to display the video image to a user of the device (*e.g.*, a television or a mobile device).

#	'602 Patent	Stingray Music System/Method
	the system is configured to provide the generated video image to a device that is operable to display the video image to a user of the device, and	

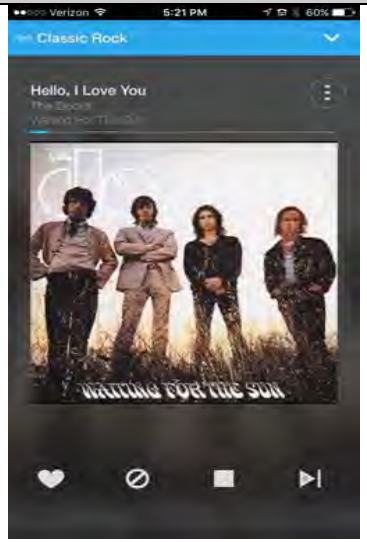
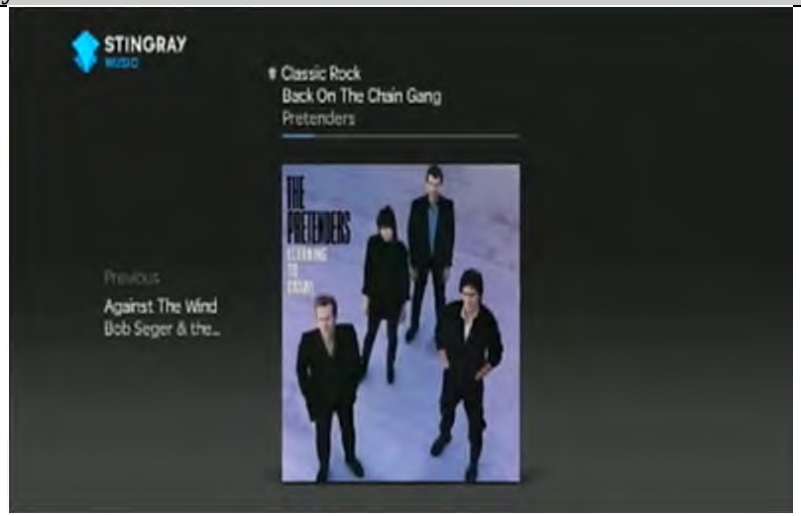
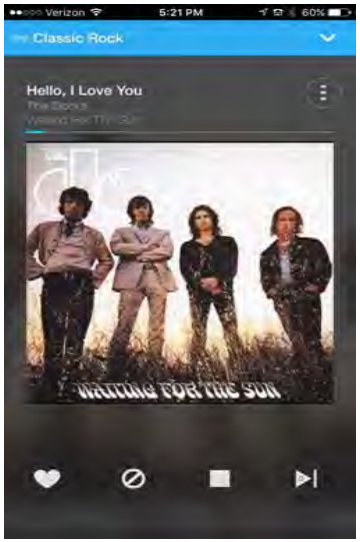
#	'602 Patent	Stingray Music System/Method
		
1e	wherein the video image generator is configured to generate the video image by retrieving the media assets identified in the video image specification.	The video image generator is configured to generate the video image (*e.g.*, (i) the video image including the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image or (ii) the video image including the song title "Hello, I Love You," the artist name "The Doors," and the associated cover art image) by retrieving the media assets (*e.g.*, the song title, the artist name, and the thumbnail cover art image associated with the sound recording "Back on the Chain Gang" or "Hello, I Love You") identified in the video image specification.

Exhibit 1: Stingray's Infringement of the '602 Patent

#	'602 Patent	Stingray Music System/Method
		 

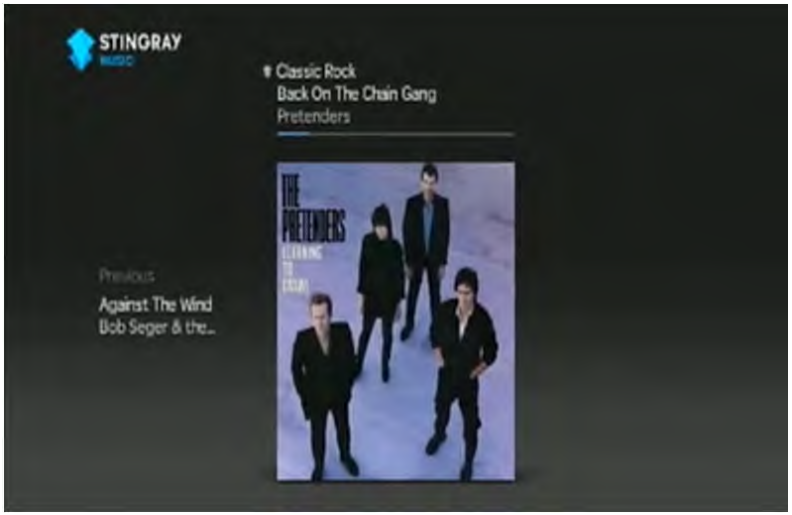
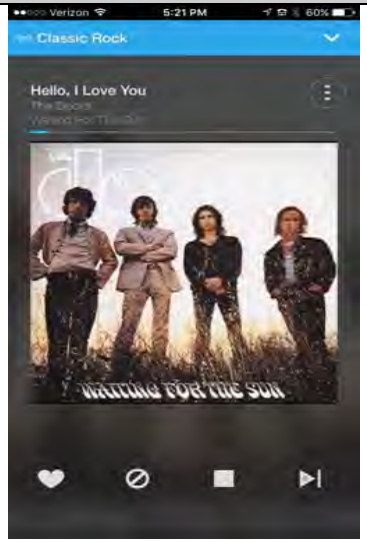
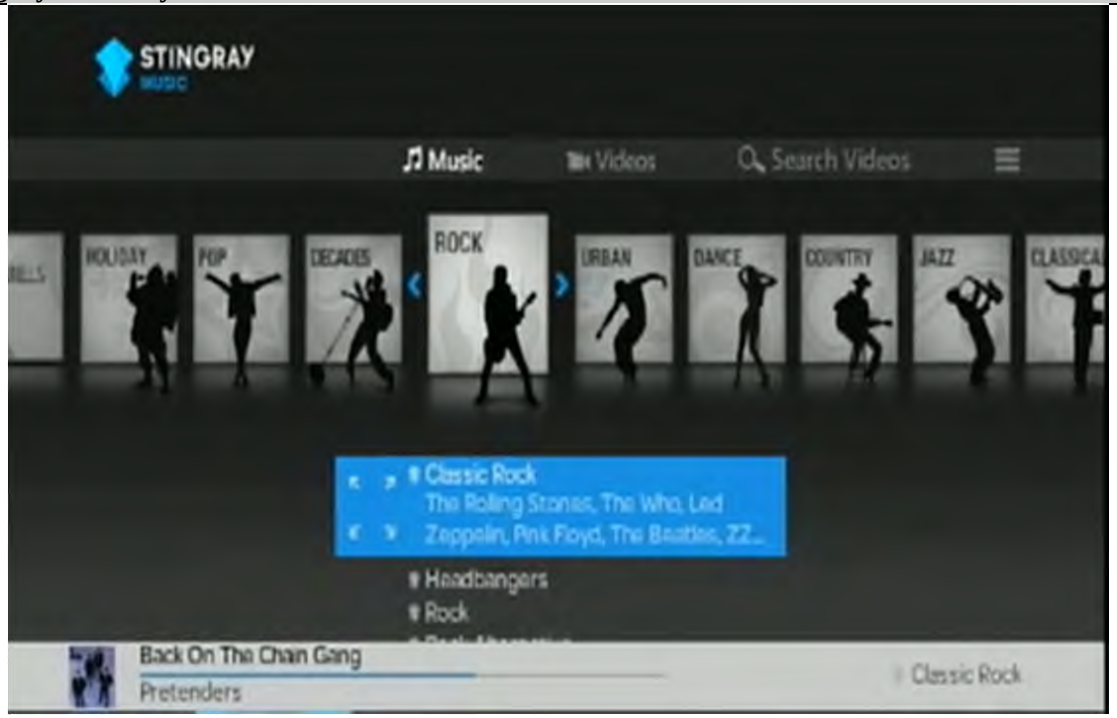
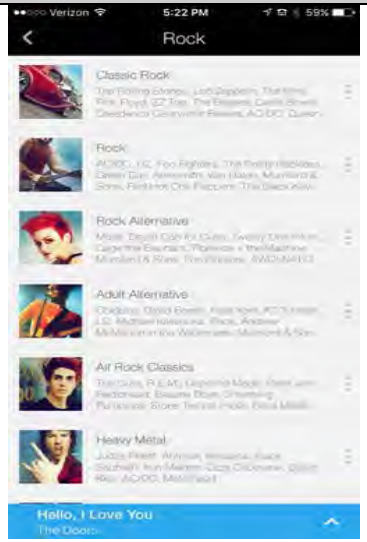
#	'602 Patent	Stingray Music System/Method
2a	2. The method of claim 1,	*See* claim 1, above.
2b	wherein the system comprises an audio/video receiver coupled to the audio/video device.	In the Stingray Music Method, the system comprises an audio/video receiver (*e.g.*, including an end-user device running the Stingray Music app) coupled to the audio/video device (*e.g.*, a television or mobile device). 

Exhibit 1: Stingray's Infringement of the '602 Patent

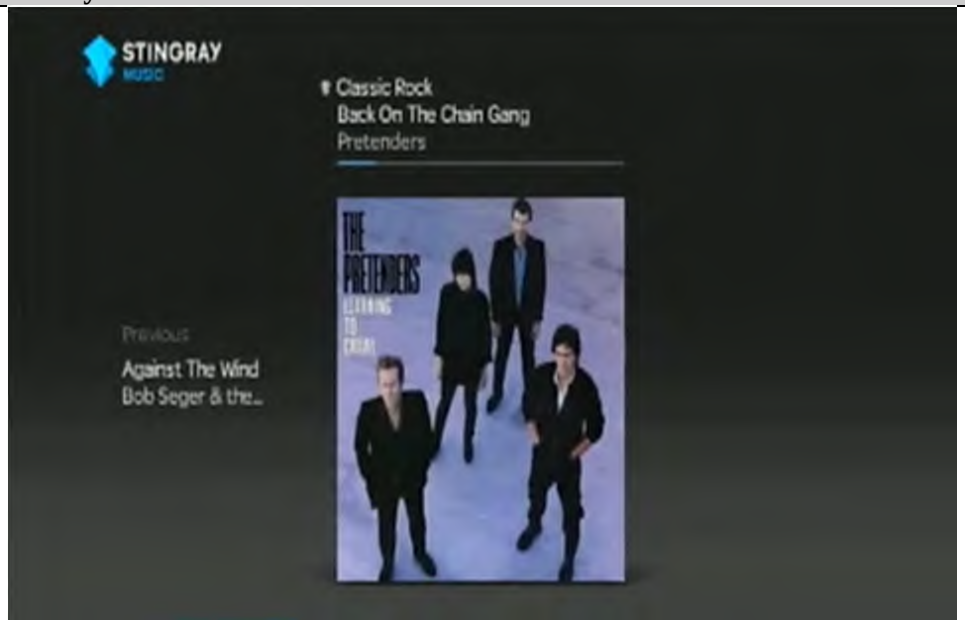
#	'602 Patent	Stingray Music System/Method
		
3a	3. The method of claim 1, further comprising:	*See* claim 1, above.
3b	after transmitting the first data packet to the system and while audio data corresponding to the sound recording is still being transmitted, transmitting a second data packet to the system, the second data packet	The Stingray Music Method, after transmitting the first data packet to the system and while audio data corresponding to the sound recording is still being transmitted (*e.g.*, audio data for the song "Back on the Chain Gang" or "Hello, I Love You"), transmits a second data packet (*e.g.*, an HTML or XML file) to the system, the second data packet comprises a video image specification that specifies a visual complement for the channel (*e.g.*, the data packet comprises a graphic visual complement for the Classic Rock channel).

#	'602 Patent	Stingray Music System/Method
	comprises a video image specification that specifies a visual complement for the channel.	

#	'602 Patent	Stingray Music System/Method
		
4a	The method of claim 1, further comprising:	*See* claim 1, above.
4b	selecting the sound recording prior to transmitting, from the first transmission to the second transmission system, said audio data; and	The Stingray Music Method selects the sound recording (*e.g.*, the recording for the song "Back on the Chain Gang" or "Hello, I Love You") prior to transmitting, from the first transmission system (*e.g.*, the Stingray UbiquiCAST broadcast system, including the UbiquiCAST music content origin server) to a second transmission system (*e.g.*, the AT&T U-verse® system and/or the cellular system and/or a LAN/WAN system), said audio data (*e.g.*, for the song "Back on the Chain Gang" or "Hello, I Love You").
4c	in response to selecting said sound recording,	The Stingray Music Method, in response to selecting said sound recording (*e.g.*, the recording for the song "Back on the Chain Gang" or "Hello, I Love You"), transmits to a video subsystem (*e.g.*, in the UbiquiCAST broadcast infrastructure and/or the AT&T U-verse® system and/or the end-user device

#	'602 Patent	Stingray Music System/Method
	transmitting to a video subsystem a trigger message, wherein the trigger message comprises an identifier associated with said selected sound recording.	running the Stingray Music app) a trigger message, wherein the trigger message comprises an identifier associated with said selected sound recording (*e.g.*, a message with identifier for the recording for the song "Back on the Chain Gang" or "Hello, I Love You").
5a	The method of claim 4,	*See* claim 4, above.
5b	wherein the video subsystem is configured to generate a video image specification based, at least in part, on pre-defined configuration data and information included in the trigger message.	In the Stingray Music Method, the video subsystem is configured to generate a video image specification (*e.g.*, a specification of a thumbnail cover art image, sound recording title, and recording artist name to be displayed in a video image associated with the sound recording "Back on the Chain Gang" or "Hello, I Love You") based, at least in part, on pre-defined configuration data (*e.g.*, display requirements) and information included in the trigger message (*e.g.*, the identifier for the recording for the song "Back on the Chain Gang" or "Hello, I Love You"). *See, e.g.*, Stingray Music website, Support/FAQ, available at music.stingray.com/en_US/about/support (last accessed August 4, 2016) ("Most distributors offer the on-screen display that allows you to see the information about the song that is currently playing, such as the title of the piece, the name of the performer or group, the title of the CD, the name of the record label and the reference number and also the composer or other related information.") (MC-Stingray00119565).

Exhibit 1: Stingray's Infringement of the '602 Patent

#	'602 Patent	Stingray Music System/Method
		

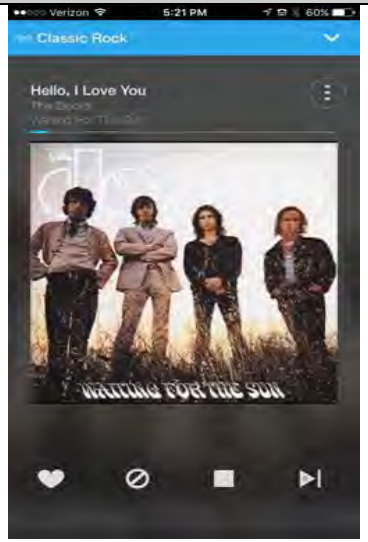
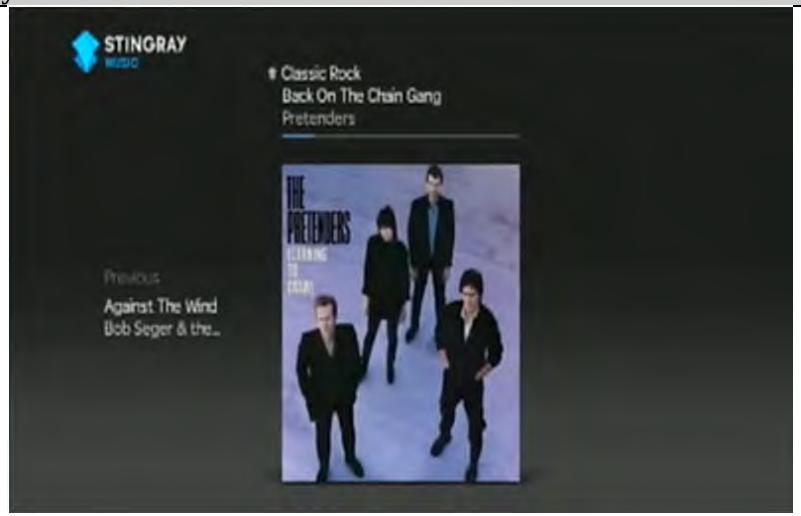
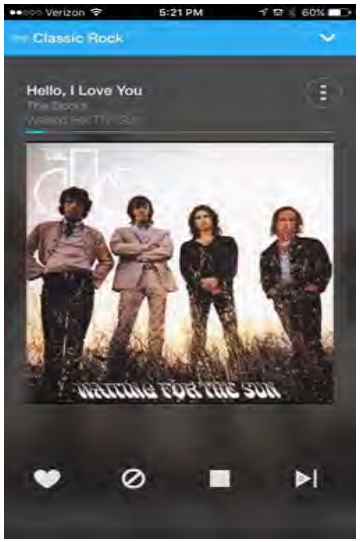
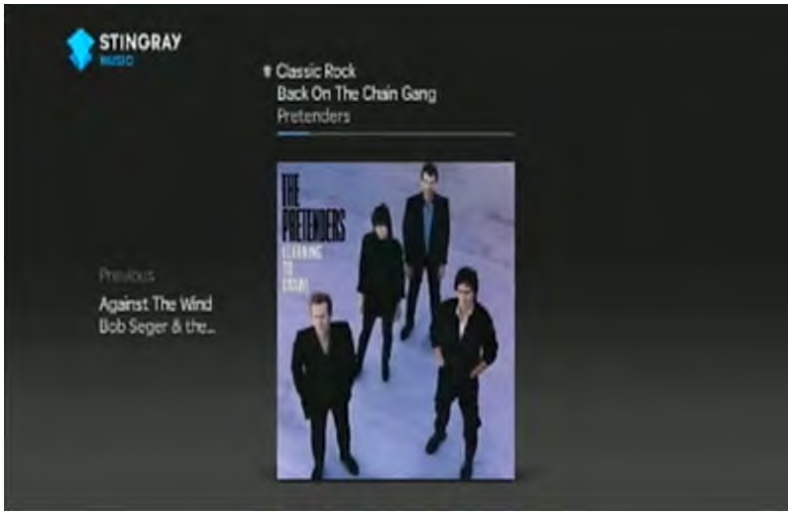
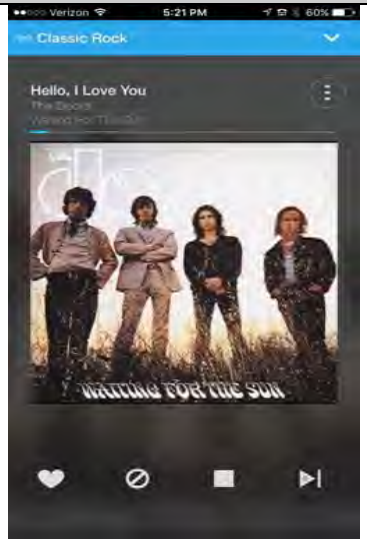
#	'602 Patent	Stingray Music System/Method
		
6a	The method of claim 5,	*See* claim 5, above.
6b	wherein the video subsystem is configured to generate the video image specification in response to receiving the trigger message.	In the Stingray Music Method, the video subsystem is configured to generate the video image specification (*e.g.*, a specification of a thumbnail cover art image, sound recording title, and recording artist name to be displayed in a video image associated with the sound recording "Back on the Chain Gang" or "Hello, I Love You") in response to receiving the trigger message.

Exhibit 1: Stingray's Infringement of the '602 Patent

#	'602 Patent	Stingray Music System/Method
		 

#	'602 Patent	Stingray Music System/Method
7a	The method of claim1,	*See* claim 1, above.
7b	wherein, for at least one media asset identifier specified by the video image specification, the video image specification specifies a screen location that is associated with said media asset identifier.	In the Stingray Music Method, for at least one media asset identifier specified by the video image specification (*e.g.*, a specification of a thumbnail cover art image, sound recording title, and recording artist name to be displayed in a video image associated with the sound recording "Back on the Chain Gang" or "Hello, I Love You"), the video image specification specifies a screen location (*e.g.*, center of the screen) that is associated with said media asset identifier. 

#	'602 Patent	Stingray Music System/Method
		
8a	8. A system for providing a visual complement to an audio service, the system comprising:	The Stingray Music System, which includes the Stingray Music TV app that is offered on the AT&T's U-verse® platform and/or the Stingray Music mobile app that is offered on Apple's iOS platform, is a system for providing a visual complement (*e.g.*, providing a song title, artist name, and/or album cover image as a visual complement to a song) to an audio service (*e.g.*, the streaming music channels available using the Stingray Music TV app on AT&T U-verse® or the Stingray Music mobile app on Apple's iOS platform). For example, the Stingray Music System provides access to streaming audio channels. *See, e.g.*, "Stingray Music Brings All Good Vibes to AT&T U-verse Customers," (Oct. 29, 2014), available at about.att.com/story/stingray_music_app_on_uverse_tv.html (last accessed Aug. 4, 2016) ("the new Stingray Music app, available at no additional charge, will have more than 100 streaming music channels") (MC-Stingray00119568); Stingray Music Website, "Continuous music service," available at http://music.stingray.com/en_US/about/baseService (last accessed Aug. 4, 2016) ("The Stingray Music continuous music network provides its listeners with a selection of close to fifty music channels, all commercial-free and uninterrupted, that cover a large variety of music genres, from rock to pop to jazz, to classical or international, delivered in pristine quality digital audio.") (MC-Stingray00119561); Stingray Music Website, "Channels," available at http://music.stingray.com/en_US/channels (last accessed Aug. 4, 2016) ("Continuous, commercial-free

#	'602 Patent	Stingray Music System/Method
		music includes a complete selection of channels covering all popular music genres.") (MC-Stingray00119558).

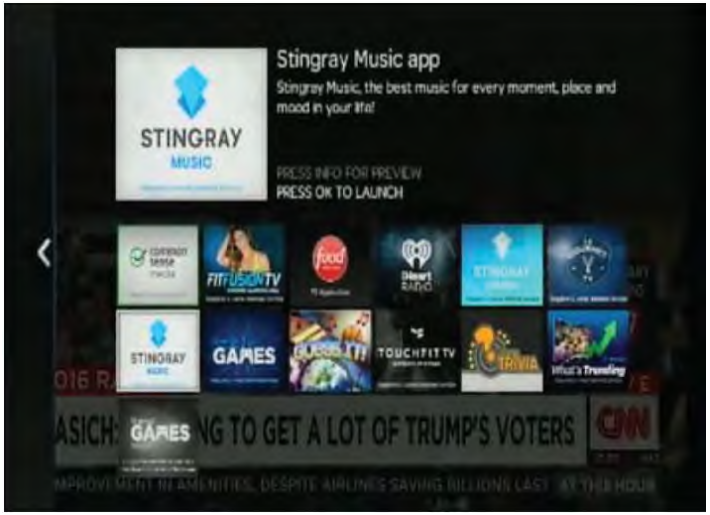
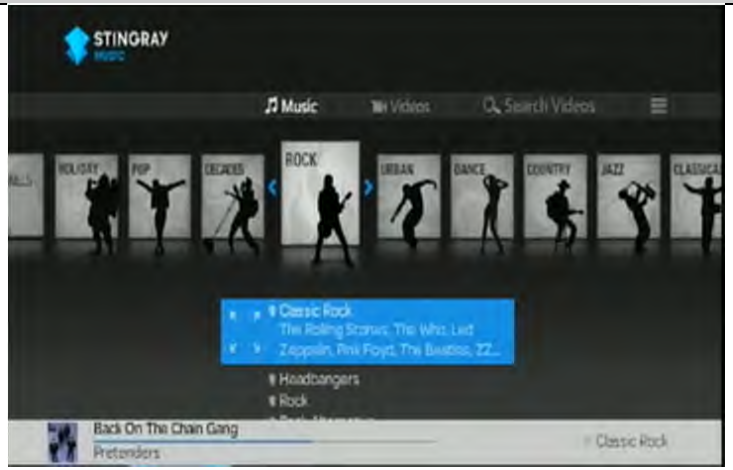
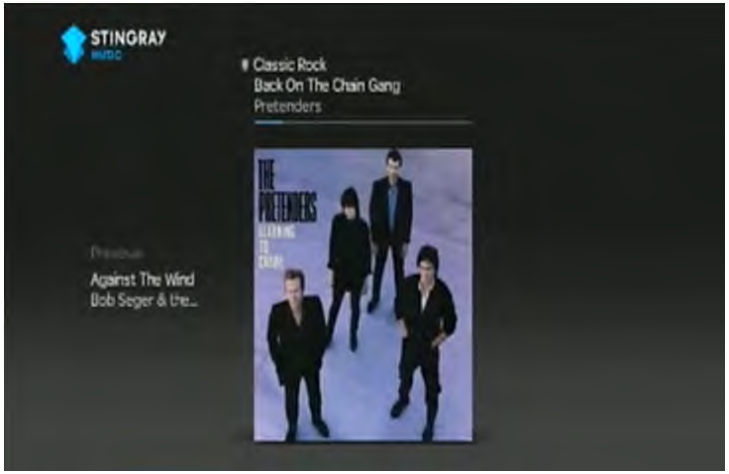
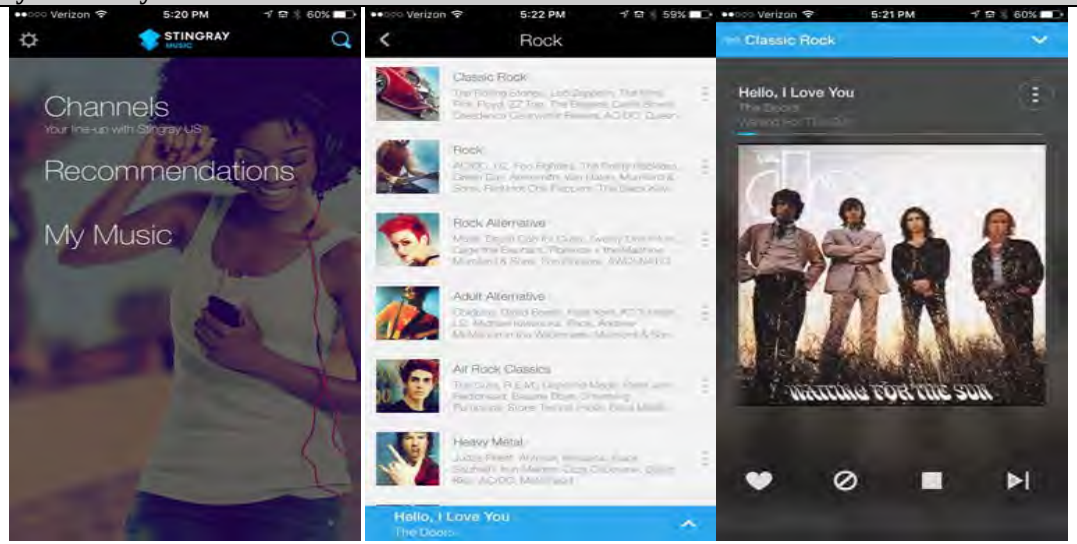
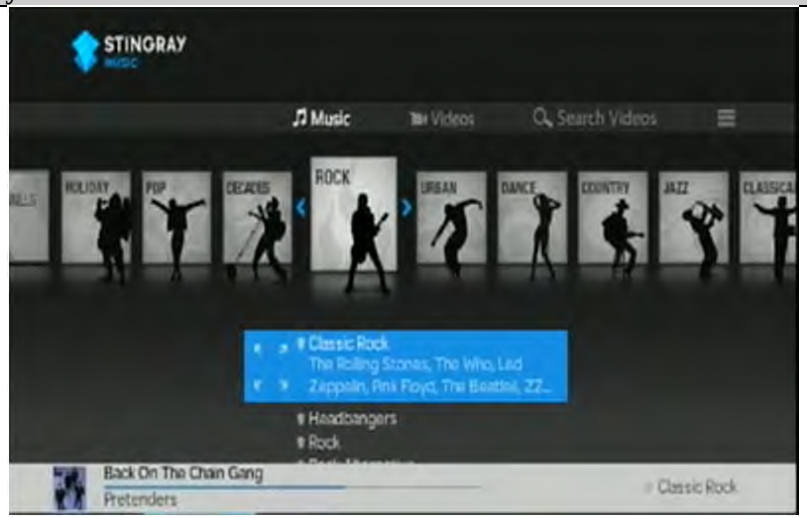
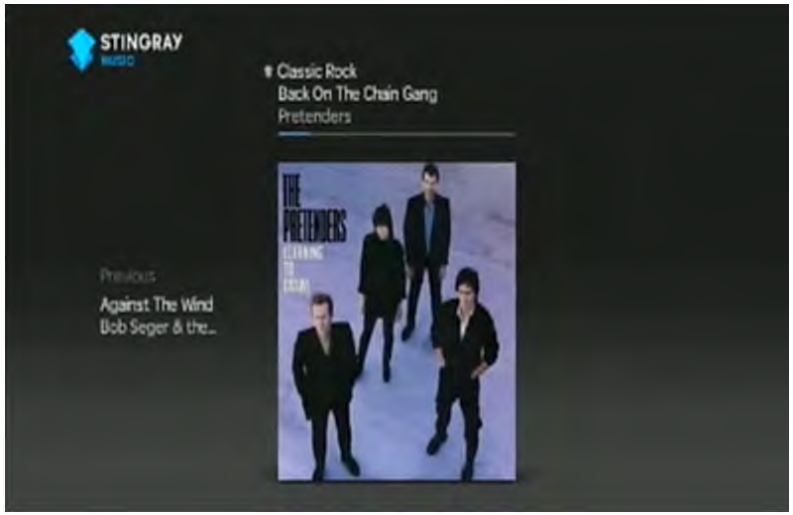
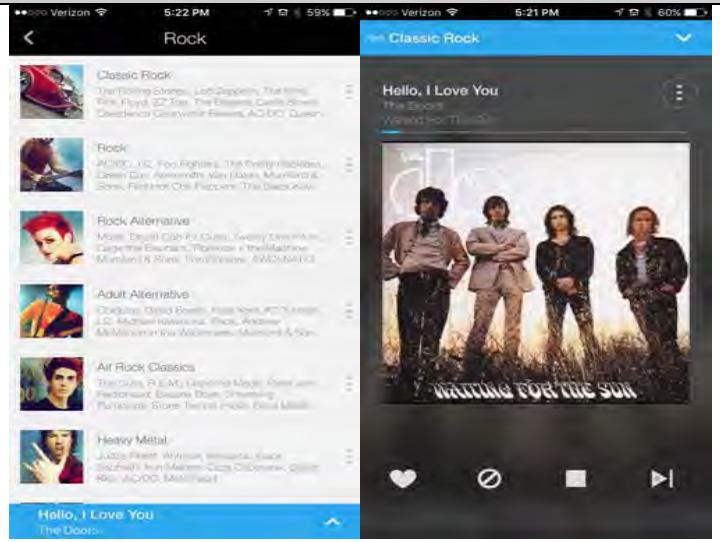


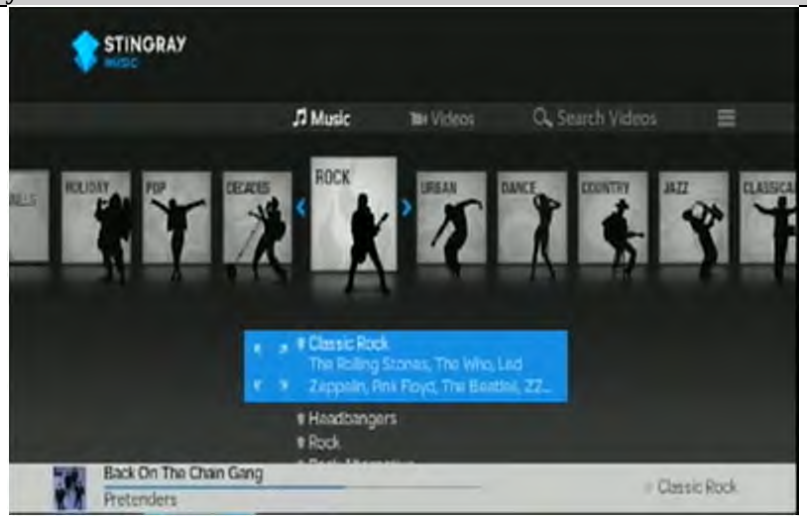
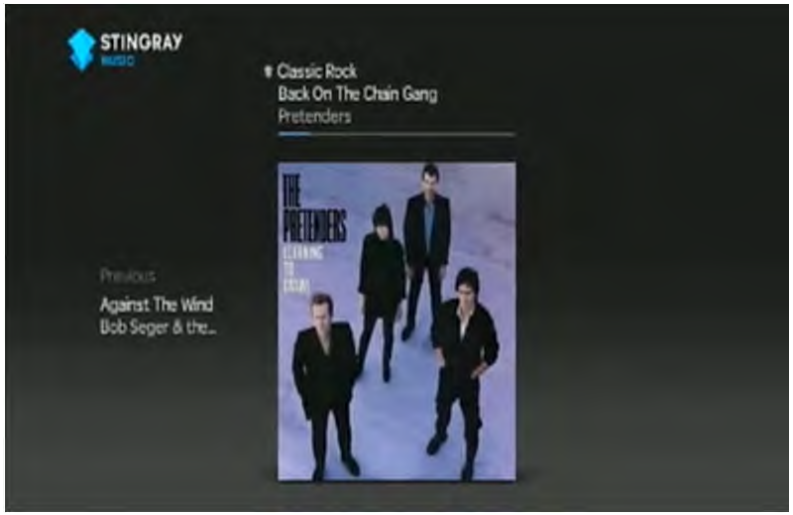
Exhibit 1: Stingray's Infringement of the '602 Patent

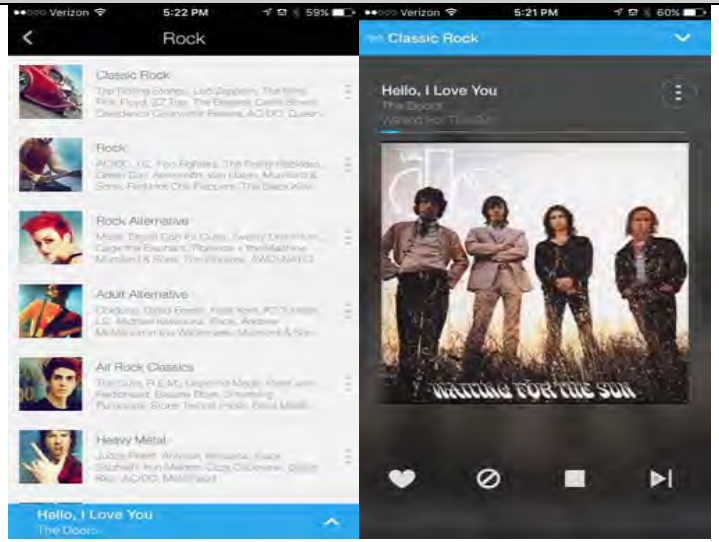
#	'602 Patent	Stingray Music System/Method
		 

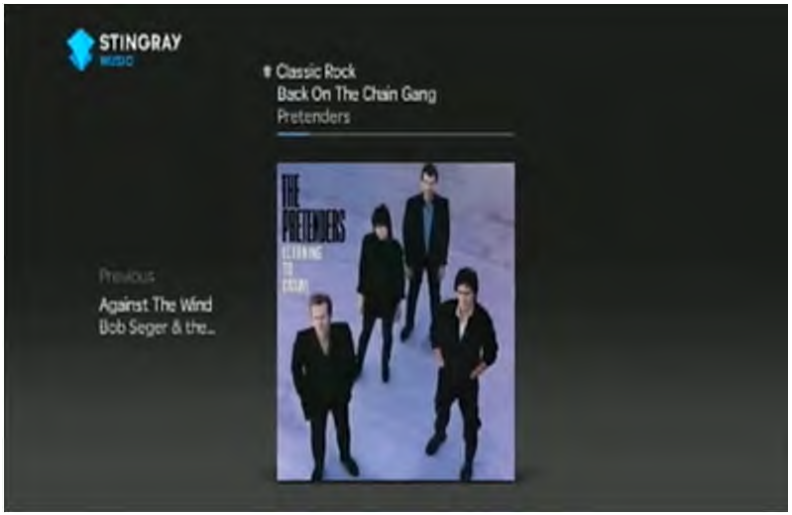
#	'602 Patent	Stingray Music System/Method
		
8b	an audio subsystem configured to store a playlist for an audio channel of the audio service; and	The Stingray Music System includes an audio subsystem (*e.g.*, in the UbiquiCAST broadcast infrastructure and/or the AT&T U-verse® system and/or the end-user device running the Stingray Music app) configured to store a playlist (*e.g.*, a playlist including the sound recording "Back on the Chain Gang" or "Hello, I Love You") for an audio channel (*e.g.*, a classic rock audio channel) of the audio service. *See*, *e.g.*, Stingray Music Website "Distribute Stingray Music," available at http://music.stingray.com/en_US/about/distribute (last accessed Aug. 4, 2016) ("A UbiquiCAST server is installed at the headend of our customers and comes preloaded with a library of content. New content and program scheduling data is uploaded by secure VPN link by the Stingray Music programmers directly to each UbiquiCAST.") (MC-Stingray00119562).

#	'602 Patent	Stingray Music System/Method
		 

#	'602 Patent	Stingray Music System/Method
		
8c	a first transmission system configured to transmit to a second transmission system audio data corresponding to a sound recording specified in the playlist; and	The Stingray Music System includes a first transmission system (*e.g.*, the Stingray UbiquiCAST broadcast system, including the UbiquiCAST music content origin server). The Stingray Music System also includes a second transmission system (*e.g.*, the AT&T U-verse® system, a cellular network system, and/or a WAN/LAN system). The first transmission system is configured to transmit to the second transmission system audio data corresponding to a sound recording (*e.g.*, audio data corresponding to a sound recording for the song "Back on the Chain Gang" or "Hello, I Love You") specified in the playlist (*e.g.*, the playlist for the classic rock linear audio channel).

#	'602 Patent	Stingray Music System/Method
		 

#	'602 Patent	Stingray Music System/Method
		
8d	a video image generator configured to:	The Stingray Music System includes a video image generator (*e.g.*, to generate (i) the video image including the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image or (ii) the video image including the song title "Hello, I Love You," the artist name "The Doors," and the associated cover art image).
8e	i) receive, while the sound recording is being transmitted, a video image specification that specifies one or more media asset identifiers that identify one or more media assets, the one or more	In the Stingray Music System, the video image generator is configured to i) receive, while the sound recording (*e.g.*, the sound recording for the song "Back on the Chain Gang" or "Hello, I Love You") is being transmitted, a video image specification (*e.g.*, a specification of a thumbnail cover art image, sound recording title, and recording artist name to be displayed in a video image associated with the sound recording "Back on the Chain Gang" or "Hello, I Love You") that specifies one or more media asset identifiers (*e.g.*, identifiers for a thumbnail cover art image, a sound recording title, and recording artist name) that identify one or more media assets (*e.g.*, a thumbnail cover art image, a sound recording title, and recording artist name for the song "Back on the Chain Gang" or "Hello, I Love You"). The one or more media assets (*e.g.*, the thumbnail cover art image, the sound recording title, and recording artist name) are associated with the sound recording (*e.g.*, the sound recording for the song "Back on the Chain Gang" or "Hello, I Love You") that is being transmitted. The video image

#	'602 Patent	Stingray Music System/Method
	media assets being associated with the sound recording that is being transmitted, and sound recording information associated with the sound recording, the sound recording information comprising one or more of the title of the sound recording and the name of the artist who recorded the sound recording, and	specification (*e.g.*, the specification of a thumbnail cover art image, sound recording title, and recording artist name to be displayed in a video image associated with the sound recording "Back on the Chain Gang" or "Hello, I Love You") also specifies sound recording information associated with the sound recording, the sound recording information comprising one or more of the title of the sound recording (*e.g.*, "Back on the Chain Gang" or "Hello, I Love You") and the name of the artist (*e.g.*, the "Pretenders" or "The Doors") who recorded the sound recording. 

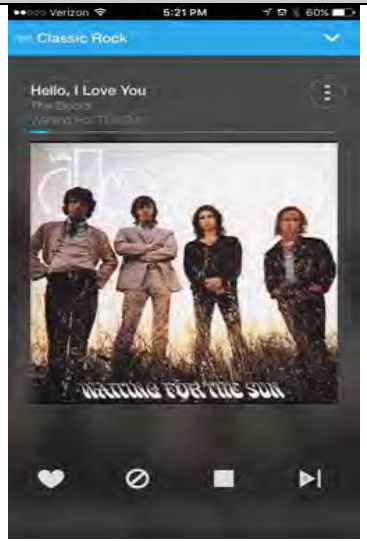
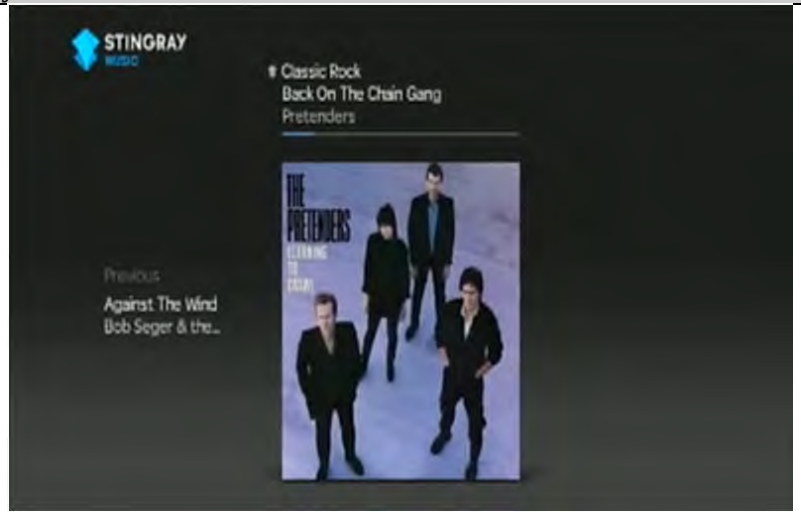
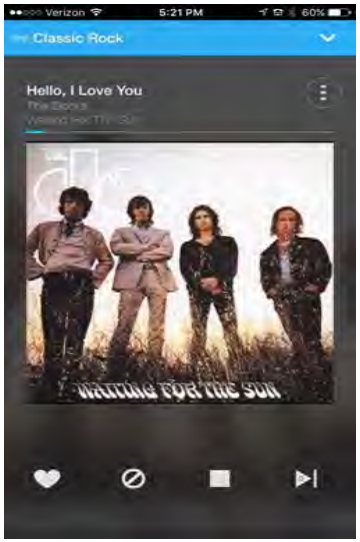
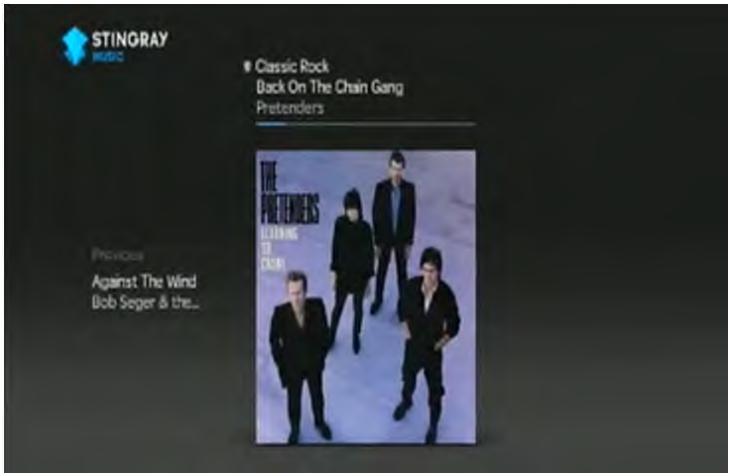
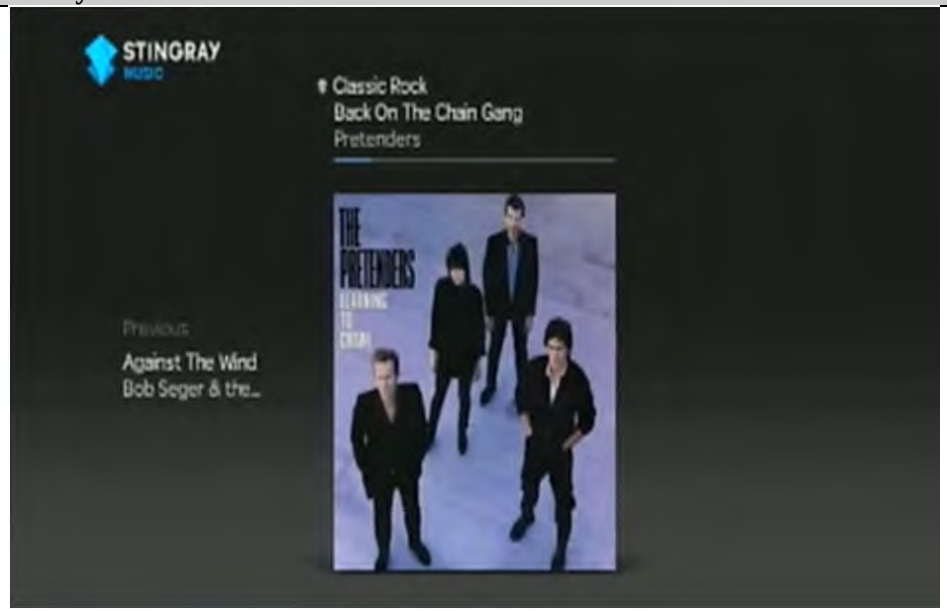
#	'602 Patent	Stingray Music System/Method
		
8f	ii) generate a video image using the media assets identified in the video image specification, wherein	In the Stingray Music System, the video image generator is configured to generate a video image using the media assets identified in the video image specification (*e.g.*, the video image including (i) the song title "Back on the Chain Gang," the artist name "Pretenders," and the specified associated cover art image or (ii) the song title "Hello, I Love You," the artist name "The Doors," and the specified associated cover art image).

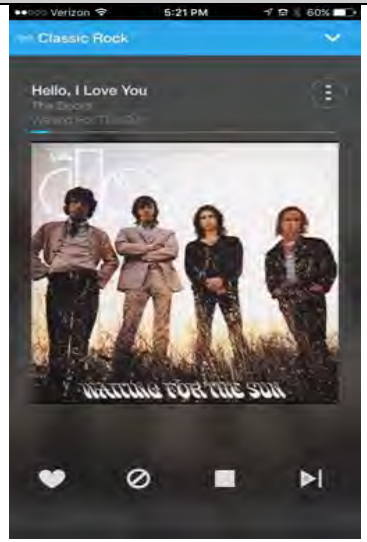
Exhibit 1: Stingray's Infringement of the '602 Patent

#	'602 Patent	Stingray Music System/Method
		 

#	'602 Patent	Stingray Music System/Method
8g	the first transmission system is further configured to transmit to the second transmission system the generated video image multiplexed with the audio data corresponding to the sound recording, wherein	In the Stingray Music System, the first transmission system is further configured to transmit to the second transmission system the generated video image (*e.g.*, the video image (i) including the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image or (ii) including the song title "Hello, I Love You," the artist name "The Doors," and the associated cover art image) multiplexed with the audio data corresponding to the sound recording (*e.g.*, the audio data corresponding to the sound recording "Back on the Chain Gang" or "Hello, I Love You"). 

#	'602 Patent	Stingray Music System/Method
		
8h	the system further comprises a video subsystem,	The Stingray Music System includes a video subsystem (*e.g.*, in the UbiquiCAST broadcast infrastructure and/or the AT&T U-verse® system and/or the end-user device running the Stingray Music app).
8i	the audio subsystem is configured to i) retrieve the audio data corresponding to the sound recording prior to the first transmission system transmitting said audio data and ii) provide to the video	In the Stingray music system, the audio subsystem of the Stingray Music System is configured to i) retrieve the audio data corresponding to the sound recording (*e.g.*, the audio data corresponding to the sound recording "Back on the Chain Gang" or "Hello, I Love You") prior to the first transmission system transmitting said audio data and ii) provide to the video subsystem of the Stingray music content origin server a trigger message comprising an identifier associated with said sound recording (*e.g.*, an identifier associated with the sound recording "Back on the Chain Gang" or "Hello, I Love You").

#	'602 Patent	Stingray Music System/Method
	subsystem a trigger message comprising an identifier associated with said sound recording.	

#	'602 Patent	Stingray Music System/Method
		
9a	The system of claim 8,	*See* claim 8, above.
9b	wherein the video subsystem is configured to i) generate the video image specification based, at least in part, on pre-defined configuration data and information included in the trigger message and ii) provide the video image	In the Stingray Music System, the video subsystem is configured to generate the video image specification (*e.g.*, a specification of a thumbnail cover art image, sound recording title, and recording artist name to be displayed in a video image associated with the sound recording "Back on the Chain Gang" or "Hello, I Love You") based, at least in part, on-predefined configuration data (*e.g.*, display requirements) and information included in the trigger message (*e.g.*, the identifier for the recording for the song "Back on the Chain Gang" or "Hello, I Love You") and provide the video image specification to the video image generator. *See*, *e.g.*, Stingray Music website, Support/FAQ, available at music.stingray.com/en_US/about/support (last accessed August 4, 2016) ("Most distributors offer the on-screen display that allows you to see the information about the song that is currently playing, such as the title of the piece, the name of the performer or group, the title of the CD, the name of the record label and the reference number and also the composer or other related information.") (MC-Stingray00119565).

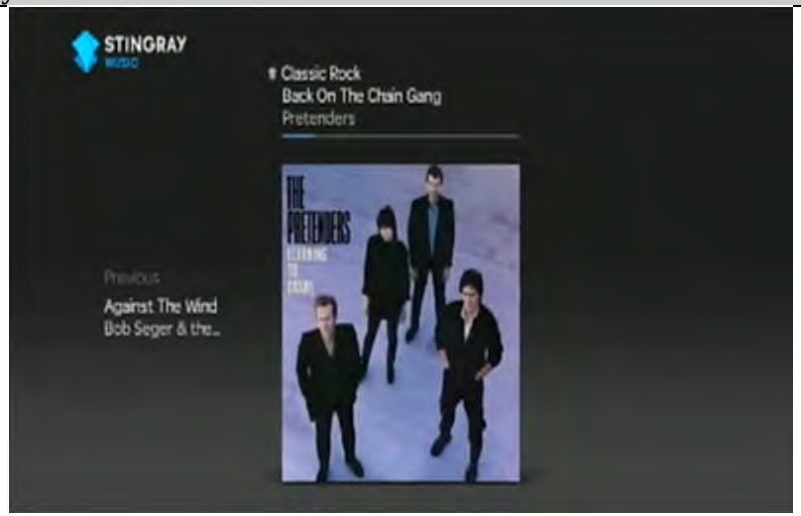
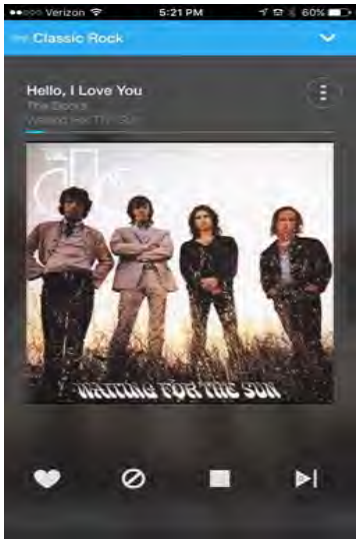
#	'602 Patent	Stingray Music System/Method
	specification to the video image generator.	 

Exhibit 1: Stingray's Infringement of the '602 Patent

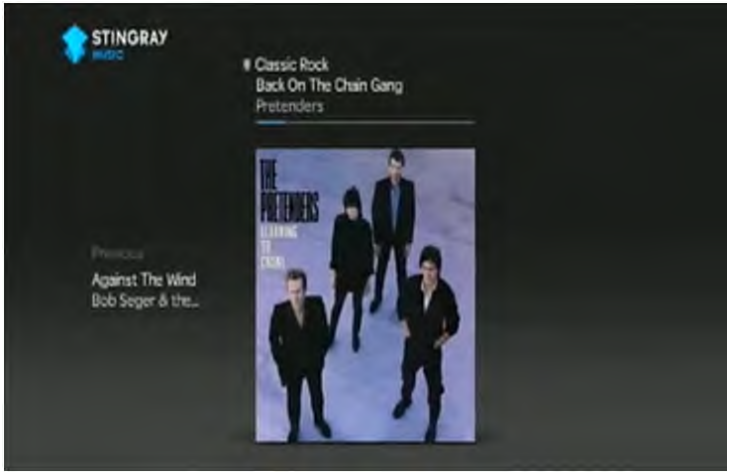
#	'602 Patent	Stingray Music System/Method
10a	The system of claim 9,	*See* claim 9, above.
10b	wherein the video subsystem is configured to generate the video image specification in response to receiving the trigger message.	In the Stingray Music System, the video subsystem is configured to generate the video image specification (*e.g.*, a specification of a thumbnail cover art image, sound recording title, and recording artist name to be displayed in a video image associated with the sound recording "Back on the Chain Gang" or "Hello, I Love You") in response to receiving the trigger message. 

Exhibit 1: Stingray's Infringement of the '602 Patent

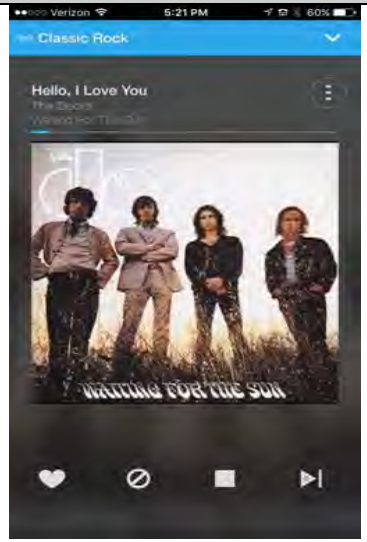
#	'602 Patent	Stingray Music System/Method
		
11a	The system of claim 8,	*See* claim 8, above.
11b	wherein, for at least one media asset identifier specified by the video image specification, the video image specification specifies a screen location that is associated with said media asset identifier.	In the Stingray Music System, for at least one media asset identifier specified by the video image specification (*e.g.*, a specification of a thumbnail cover art image, sound recording title, and recording artist name to be displayed in a video image associated with the sound recording "Back on the Chain Gang" or "Hello, I Love You"), the video image specification specifies a screen location (*e.g.*, center of the screen) that is associated with said media asset identifier.

Exhibit 1: Stingray's Infringement of the '602 Patent

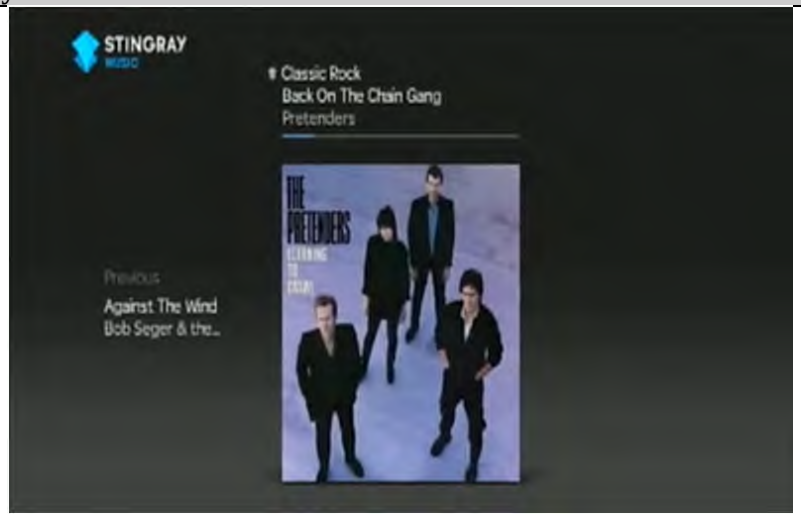
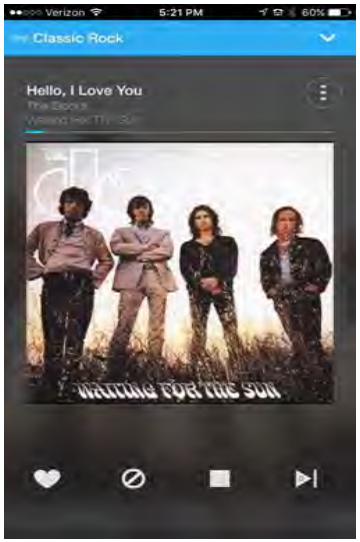
#	'602 Patent	Stingray Music System/Method
		 

EXHIBIT 2

Stingray's Infringement of the '245 Patent

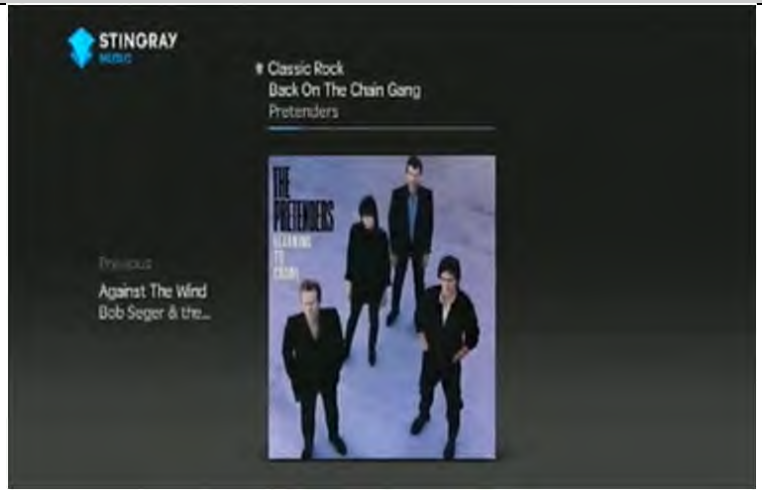
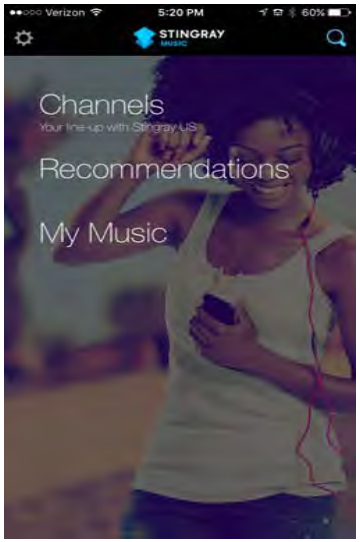
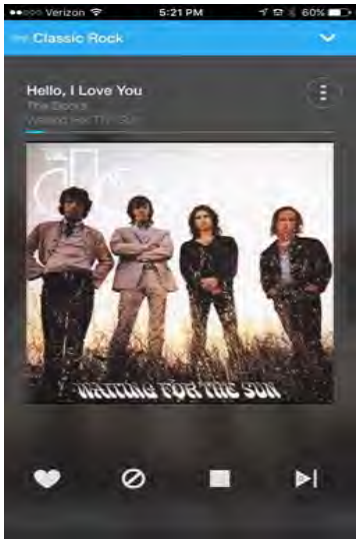
UNITED STATES PATENT NO. 9,357,245 ("the '245 Patent")

This portion of Plaintiff's infringement contentions refers to the Stingray Music TV app that is offered on the AT&T's U-verse® platform and the Stingray Music mobile app that is offered on Apple's iOS platform as exemplary. These contentions apply to all similar Stingray Music products and services as offered on other platforms[1] (collectively the "Stingray Music System/Method").

#	'245 Patent	Stingray Music System/Method
1a	1. A method for providing a visual complement to an audio stream, comprising:	The Stingray Music Method, using the Stingray Music TV app on AT&T's U-verse® platform and/or the Stingray Music mobile app on the iOS platform, is a method for providing a visual complement to an audio stream (*e.g.*, providing a song title, artist name, and/or album cover image as a visual complement to a song). 

[1] These platforms include, for example, cable operator, satellite, Internet Protocol television (IPTV), mobile, and/or website platforms.

Exhibit 2: Stingray's Infringement of the '245 Patent

#	'245 Patent	Stingray Music System/Method
		  

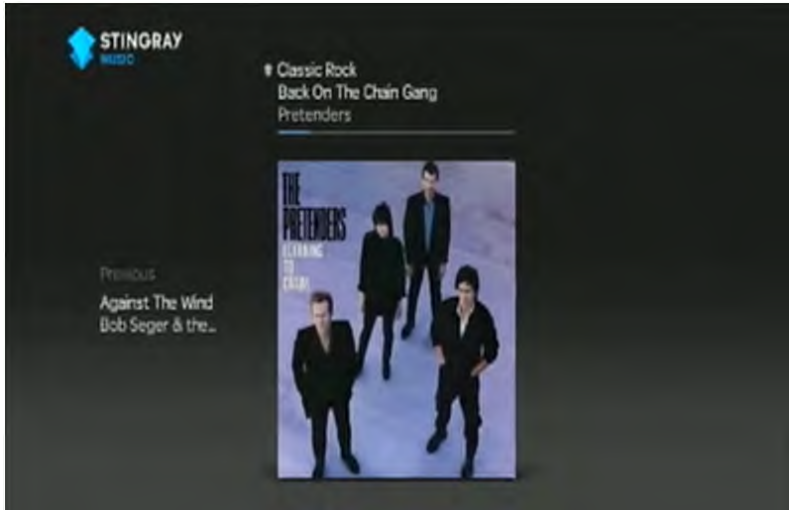
#	'245 Patent	Stingray Music System/Method
1b	transmitting, from a first transmission system to a second transmission system, audio data corresponding to a selected song; and	The Stingray Music Method transmits, from a first transmission system (*e.g.*, the Stingray UbiquiCAST broadcast system, including the UbiquiCAST music content origin server) to a second transmission system (*e.g.*, the AT&T U-verse® system, the cellular system, and/or a LAN/WAN system), audio data corresponding to a selected song (*e.g.*, audio data corresponding to the selected song "Back on the Chain Gang" or "Hello, I Love You"). 

Exhibit 2: Stingray's Infringement of the '245 Patent

#	'245 Patent	Stingray Music System/Method
		
1c	transmitting a data packet that was generated using an identifier identifying the selected song, wherein the data packet includes a media asset identifier identifying a media asset and further includes song information associated with	The Stingray Music Method transmits a data packet (*e.g.*, an HTML or XML file) that was generated using an identifier identifying the selected song (*e.g.*, the song "Back on the Chain Gang" or "Hello, I Love You"), wherein the data packet includes a media asset identifier identifying a media asset (*e.g.*, a thumbnail cover art image for the song "Back on the Chain Gang" or "Hello, I Love You") and further includes song information associated with the selected song, the song information comprising the title of the song (*e.g.*, "Back on the Chain Gang" or "Hello, I Love You") and the name of the artist who recorded the song (*e.g.*, the "Pretenders" or "The Doors").

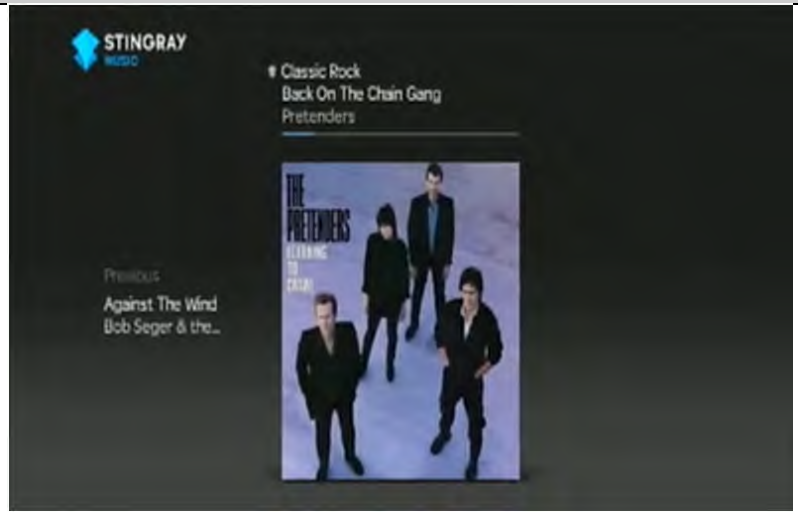
#	'245 Patent	Stingray Music System/Method
	the selected song, the song information comprising the title of the song and the name of the artist who recorded the song, wherein	 

Exhibit 2: Stingray's Infringement of the '245 Patent

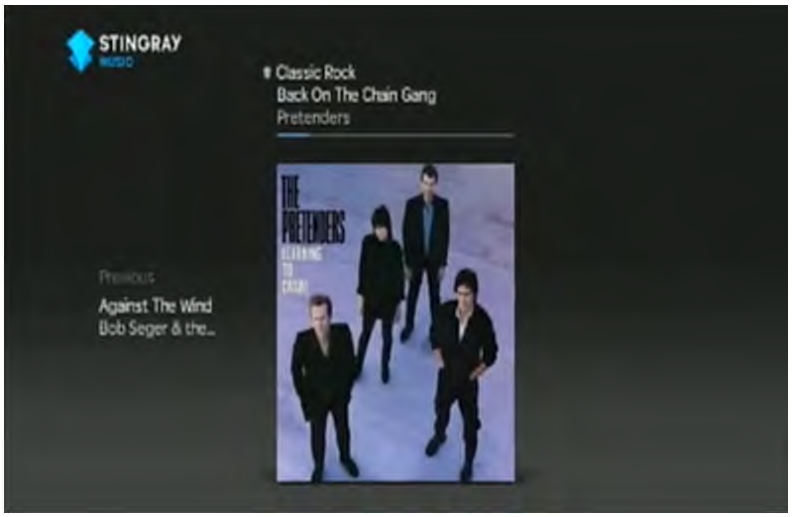
#	'245 Patent	Stingray Music System/Method
1d	the step of transmitting the data packet comprises transmitting the data packet to a receiving system that is configured such that, in response to receiving the data packet, the receiving system automatically generates a video image using the information included in the data packet and automatically outputs the generated video image such that it is received by a display device that is operable to display the video image to a user of the display device without the user having to select a menu item, and	The Stingray Music Method transmits the data packet (*e.g.*, the HTML or XML file) to a receiving system (*e.g.*, the UbiquiCAST broadcast system and/or the AT&T U-verse® system and/or the cellular system and/or a LAN/WAN system, including an end-user device running the Stingray Music app) that is configured such that, in response to receiving the data packet, the receiving system automatically generates a video image (*e.g.*, a video image including (i) the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image or (ii) the song title "Hello, I Love You," the artist name "The Doors," and the associated cover art image) using the information included in the data packet and automatically outputs the generated video image (*e.g.*, the video image including (i) the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image or (ii) the song title "Hello, I Love You," the artist name "The Doors," and the associated cover art image) such that it is received by a display device (*e.g.*, end-user device running the Stingray Music app) that is operable to display the video image to a user of the display device without the user having to select a menu item. 

Exhibit 2: Stingray's Infringement of the '245 Patent

#	'245 Patent	Stingray Music System/Method
		
1e	the generated video image includes the song information comprising the title of the song and the name of the artist.	In the Stingray Music Method, the generated video image (*e.g.*, the video image including (i) the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image or (ii) the song title "Hello, I Love You," the artist name "The Doors," and the associated cover art image) includes the song information comprising the title of the song (*e.g.*, "Back on the Chain Gang" or "Hello, I Love You") and the name of the artist (*e.g.*, "Pretenders" or "The Doors").

Exhibit 2: Stingray's Infringement of the '245 Patent

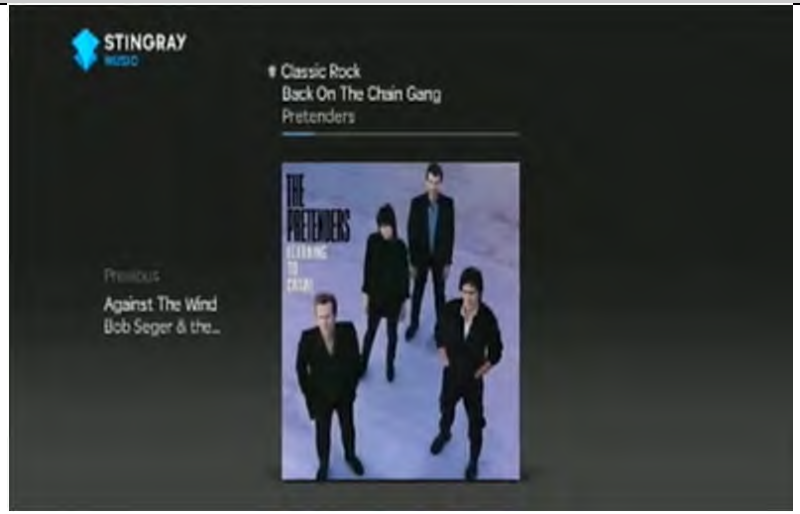
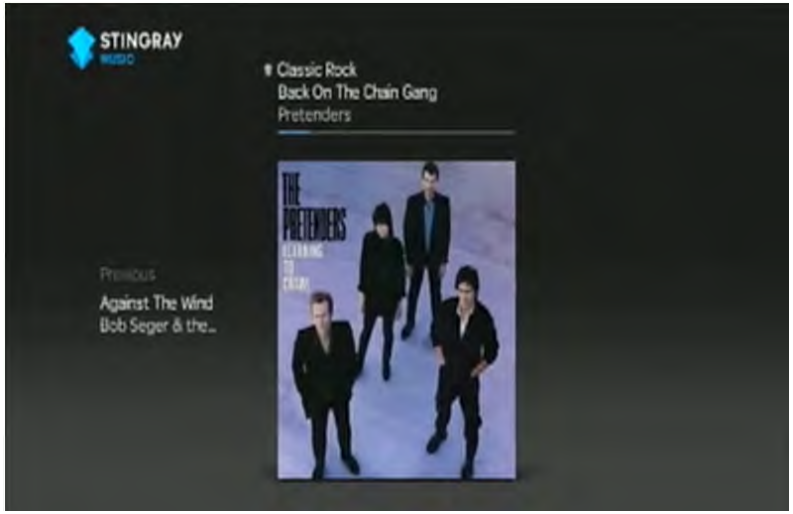
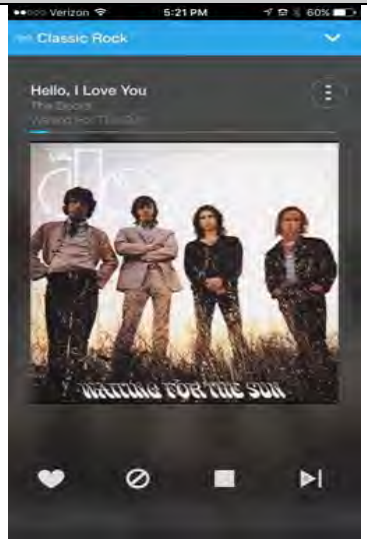
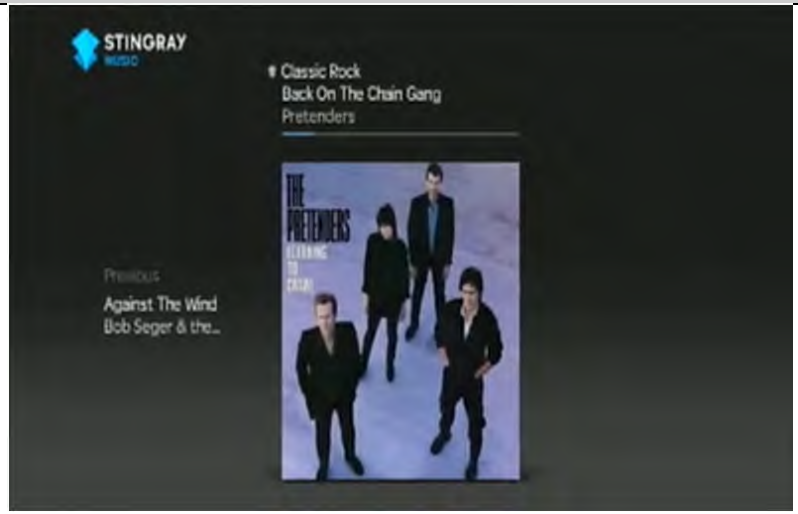
#	'245 Patent	Stingray Music System/Method
		 

Exhibit 2: Stingray's Infringement of the '245 Patent

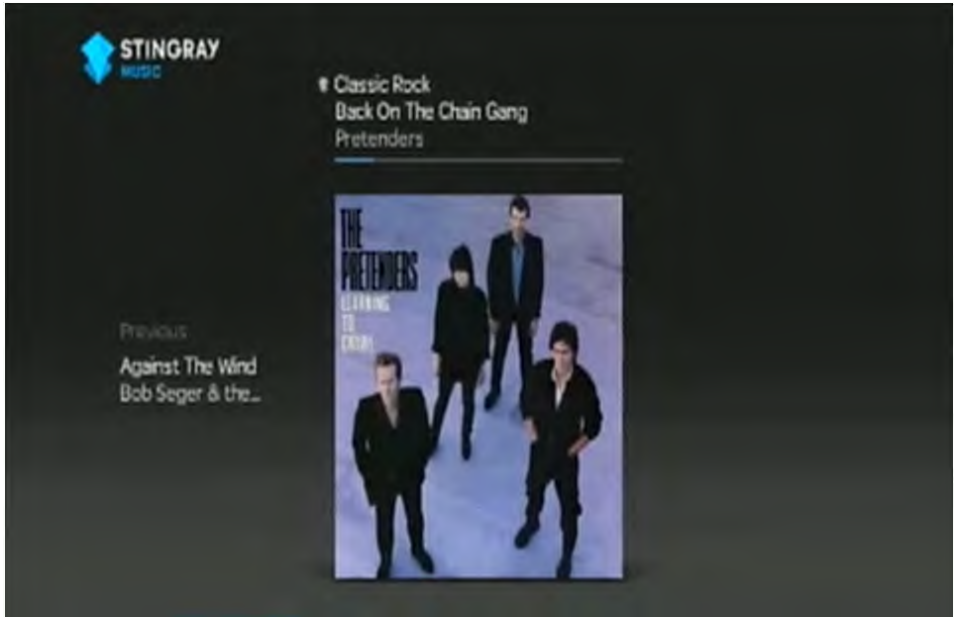
#	'245 Patent	Stingray Music System/Method
2a	2. The method of claim 1,	*See* claim 1, above.
2b	wherein the identified media asset is a still image associated with the song.	In the Stingray Music Method, the identified media asset is a still image associated with the song (*e.g.*, the cover art is (i) a still image of the album "Learning to Crawl" associated with the song "Back on the Chain Gang" or (ii) a still image of the album "Waiting For the Sun" associated with the song "Hello, I Love You"). 

#	'245 Patent	Stingray Music System/Method
		
3a	The method of claim 1, further comprising:	*See* claim 1, above.
3b	after transmitting the data packet to the receiving system and while audio data corresponding to the song is being transmitted, transmitting to the receiving system a second data packet for	The Stingray Music Method, after transmitting the data packet to the receiving system and while audio data corresponding to the song (*e.g.*, "Back on the Chain Gang" or "Hello, I Love You") is being transmitted, transmitting to the receiving system a second data packet (*e.g.*, an HTML or XML file) for the song, wherein the second data packet specifies one or more media asset identifiers, each of which identifies one or more media assets (*e.g.*, a thumbnail cover art image for the song "Back on the Chain Gang" or "Hello, I Love You"), said second data packet further comprising the song information associated with the song.

#	'245 Patent	Stingray Music System/Method
	the song, wherein the second data packet specifies one or more media asset identifiers, each of which identifies one or more media assets, said second data packet further comprising the song information associated with the song.	 

#	'245 Patent	Stingray Music System/Method
4a	The method of claim 1, further comprising:	*See* claim 1, above.
4b	selecting the song prior to transmitting, from the first transmission system to the second transmission system, said audio data; and	The Stingray Music Method selects the song (*e.g.*, the song "Back on the Chain Gang" or "Hello, I Love You") prior to transmitting, from the first transmission system to the second transmission system, said audio data (*e.g.*, for the song "Back on the Chain Gang" or "Hello, I Love You").
4c	in response to selecting said song, transmitting to a video subsystem a trigger message, wherein the trigger message comprises an identifier associated with said selected song.	The Stingray Music Method, in response to selecting said song (*e.g.*, the song "Back on the Chain Gang" or "Hello, I Love You"), transmits to a video subsystem (*e.g.*, in the UbiquiCAST server and/or AT&T U-verse® system and/or end-user device running the Stingray Music app) a trigger message, wherein the trigger message comprises an identifier associated with said selected song (*e.g.*, a message with identifier for the song "Back on the Chain Gang" or "Hello, I Love You").
5a	The method of claim 4,	*See* claim 4, above.

Exhibit 2: Stingray's Infringement of the '245 Patent

#	'245 Patent	Stingray Music System/Method
5b	wherein the video subsystem is configured to generate the data based, at least in part, on pre-defined configuration data and information included in the trigger message.	In the Stingray Music Method, the video subsystem is configured to generate the data (*e.g.*, a thumbnail cover art image, sound recording title, and recording artist name to be displayed in a video image associated with the sound recording "Back on the Chain Gang" or "Hello, I Love You") based, at least in part, on-predefined configuration data (*e.g.*, display requirements) and information included in the trigger message (*e.g.*, the message including an identifier for the recording for the song "Back on the Chain Gang" or "Hello, I Love You"). *See, e.g.*, Stingray Music website, Support/FAQ, available at music.stingray.com/en_US/about/support (last accessed August 4, 2016) ("Most distributors offer the on-screen display that allows you to see the information about the song that is currently playing, such as the title of the piece, the name of the performer or group, the title of the CD, the name of the record label and the reference number and also the composer or other related information.") (MC-Stingray00119565). 

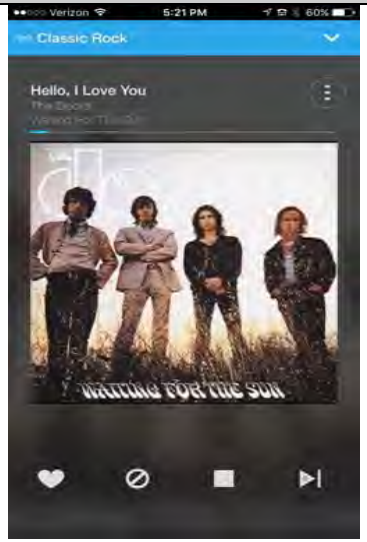
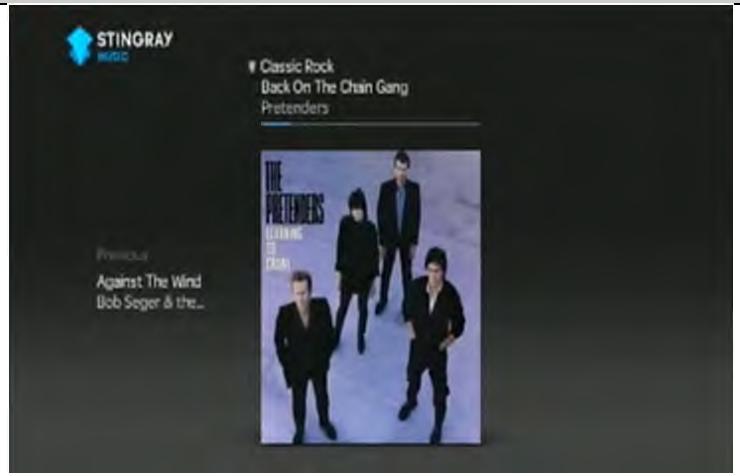
#	'245 Patent	Stingray Music System/Method
		
6a	The method of claim 5,	*See* claim 5, above.
6b	wherein the video subsystem is configured to generate the video image specification in response to receiving the trigger message.	In the Stingray Music Method, the video subsystem is configured to generate the video image specification (*e.g.*, a specification of a thumbnail cover art image, sound recording title, and recording artist name to be displayed in a video image associated with the sound recording "Back on the Chain Gang" or "Hello, I Love You") in response to receiving the trigger message.

Exhibit 2: Stingray's Infringement of the '245 Patent

#	'245 Patent	Stingray Music System/Method
		 
7a	The method of	*See* claim 1, above

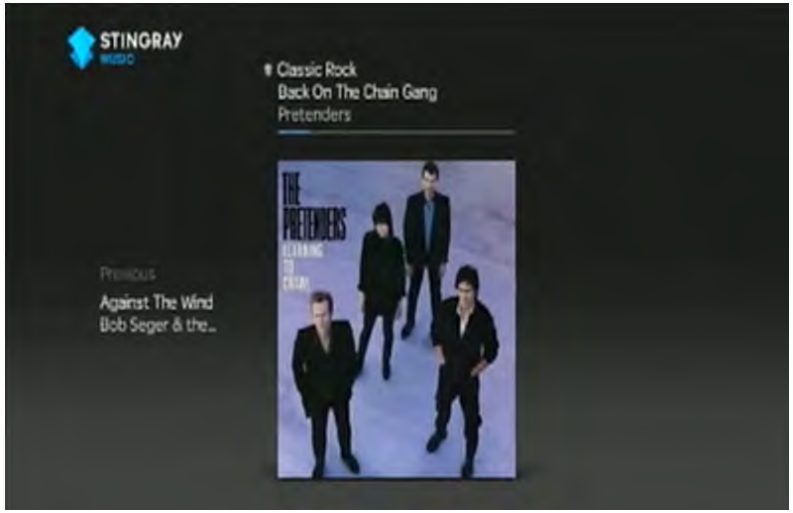
#	'245 Patent	Stingray Music System/Method
	claim 1,	
7b	wherein the data packet specifies a screen location that is associated with said media asset identifier.	In the Stingray Music Method, the data packet specifies a screen location that is associated with said media asset identifier (*e.g.*, a center screen location associated with the media asset identifier for the cover art image). 

Exhibit 2: Stingray's Infringement of the '245 Patent

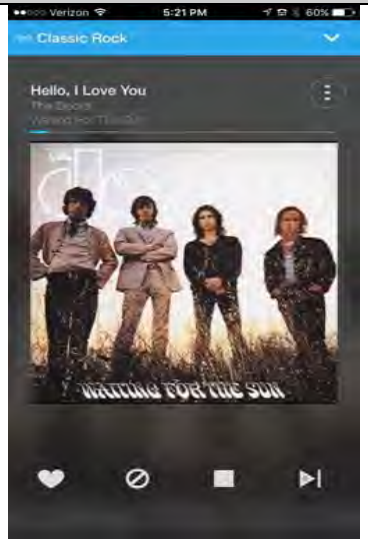
#	'245 Patent	Stingray Music System/Method
		
8a	The method of claim 1,	*See* claim 1, above.
8b	wherein the song is a song that falls within a particular category of songs, and said media asset identifier identifies a media asset associated with the particular category.	In the Stingray Music Method, the song (*e.g.*, "Back on the Chain Gang" or "Hello, I Love You") is a song that falls within a particular category of songs (*e.g.*, a "Classic Rock" genre), and said media asset identifier identifies a media asset associated with the particular category (*e.g.*, the "Classic Rock" genre information and/or the associated graphic image).

Exhibit 2: Stingray's Infringement of the '245 Patent

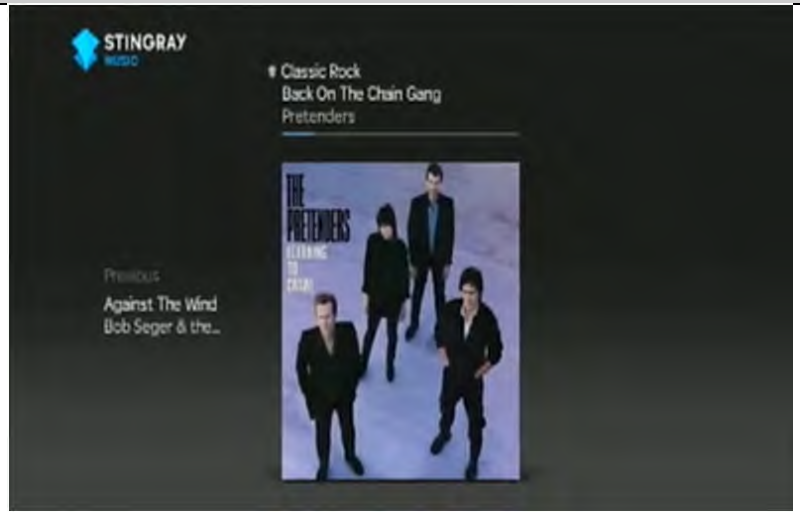
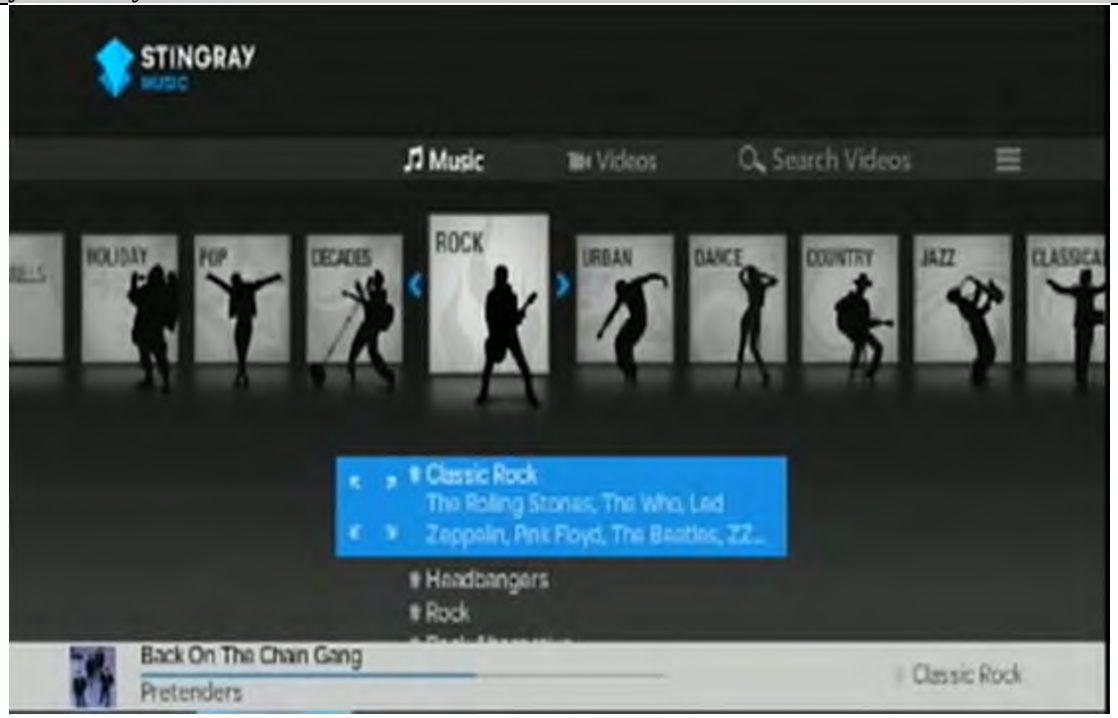
#	'245 Patent	Stingray Music System/Method
		

Exhibit 2: Stingray's Infringement of the '245 Patent

#	'245 Patent	Stingray Music System/Method
		

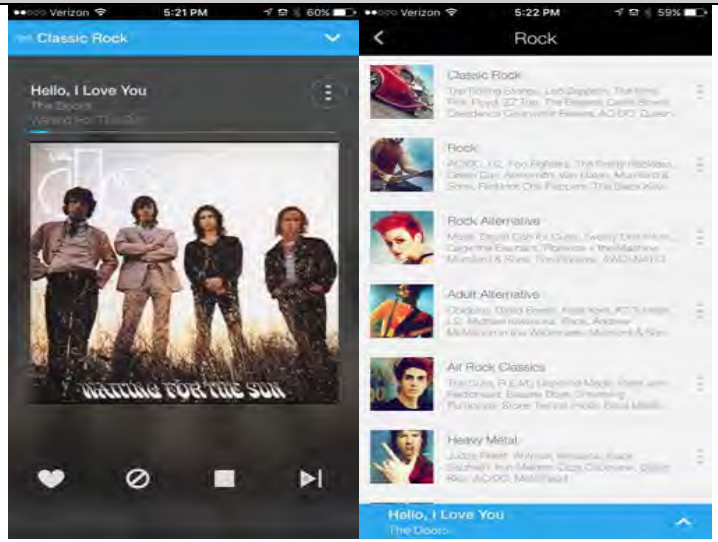
#	'245 Patent	Stingray Music System/Method
		
9a	The method of claim 1,	*See* claim 1, above.
9b	wherein the data packet is transmitted while the audio data is being transmitted.	In the Stingray Music Method, the data packet (*e.g.*, an HTML or XML file) is transmitted while the audio data (*e.g.*, audio data corresponding to the sound recording "Back on the Chain Gang" or "Hello, I Love You") is being transmitted.

Exhibit 2: Stingray's Infringement of the '245 Patent

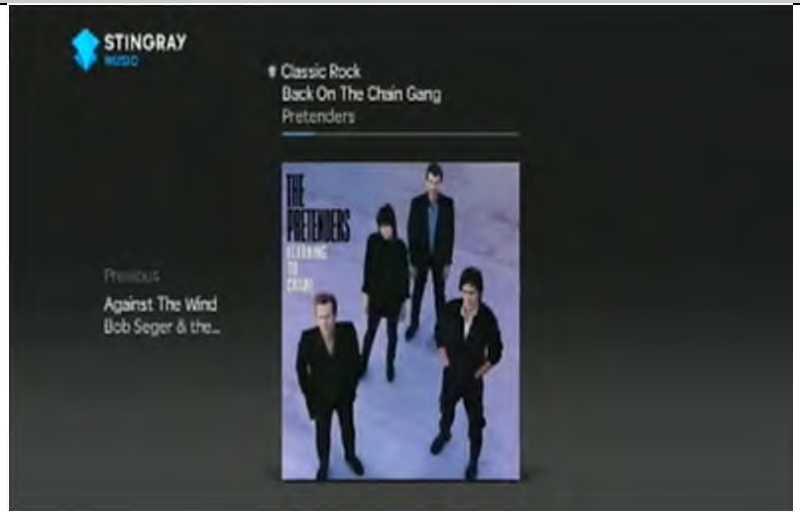
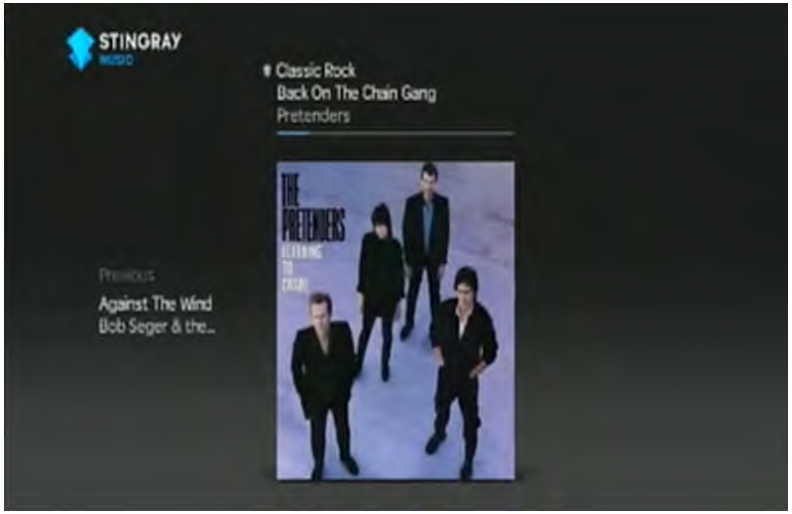
#	'245 Patent	Stingray Music System/Method
		 

Exhibit 2: Stingray's Infringement of the '245 Patent

#	'245 Patent	Stingray Music System/Method
10a	The method of claim 1,	*See* claim 1, above.
10b	wherein the video image is encoded according to a Moving Pictures Expert Group (MPEG) standard.	The video image (*e.g.*, a video image including (i) the song title "Back on the Chain Gang," and/or the artist name "Pretenders" and the associated cover art image or (ii) the song title "Hello, I Love You," and/or the artist name "The Doors" and the associated cover art image) is encoded according to a Moving Pictures Expert Group (MPEG) standard. 

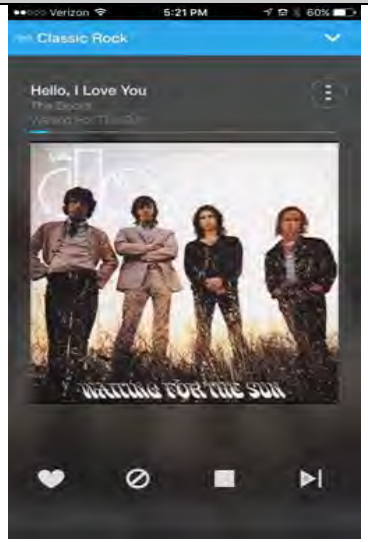
#	'245 Patent	Stingray Music System/Method
		
11a	The method of claim 1, further comprising:	*See* claim 1, above.
11b	generating the data packet; and	The Stingray Music Method generates the data packet (*e.g.*, the HTML or XML file).
11c	after generating the data packet, selecting the song from a playlist prior to transmitting the audio data corresponding to the selected song.	The Stingray Music Method, after generating the data packet, selects the song (*e.g.*, "Back on the Chain Gang" or "Hello, I Love You") from a playlist prior to transmitting the audio data corresponding to the selected song. *See*, *e.g.*, Stingray Music Website, "Continuous Music Service," available at http://music.stingray.com/en_US/about/baseService (last accessed Aug. 4, 2016) ("each channel is professionally programmed by someone who loves and knows the music . . .") (MC-Stingray00119561).

Exhibit 2: Stingray's Infringement of the '245 Patent

#	'245 Patent	Stingray Music System/Method
12a	12. A system for providing a visual complement to an audio service, the system comprising:	The Stingray Music System, which includes the Stingray Music TV app on AT&T's U-verse® platform and/or the Stingray Music mobile app on Apple's iOS platform, is a system for providing a visual complement (*e.g.*, providing a song title, artist name, and/or album cover image as a visual complement to a song) to an audio service (*e.g.*, the streaming music channels available using the Stingray Music TV app on AT&T U-verse® or the Stingray Music mobile app on a mobile device). For example, the Stingray Music System provides access to streaming linear audio channels. *See, e.g.*, "Stingray Music Brings All Good Vibes to AT&T U-verse Customers," dated Oct. 29, 2014, available at about.att.com/story/stingray_music_app_on_uverse_tv.html (last accessed Aug. 4, 2016) ("the new Stingray Music app, available at no additional charge, will have more than 100 streaming music channels") (MC-Stingray00119568); Stingray Music Website, "Continuous Music Service," available at http://music.stingray.com/en_US/about/baseService (last accessed Aug. 4, 2016) ("The Stingray Music continuous music network provides its listeners with a selection of close to fifty music channels, all commercial-free and uninterrupted, that cover a large variety of music genres, from rock to pop to jazz, to classical or international, delivered in pristine quality digital audio.") (MC-Stingray00119561). 

Exhibit 2: Stingray's Infringement of the '245 Patent

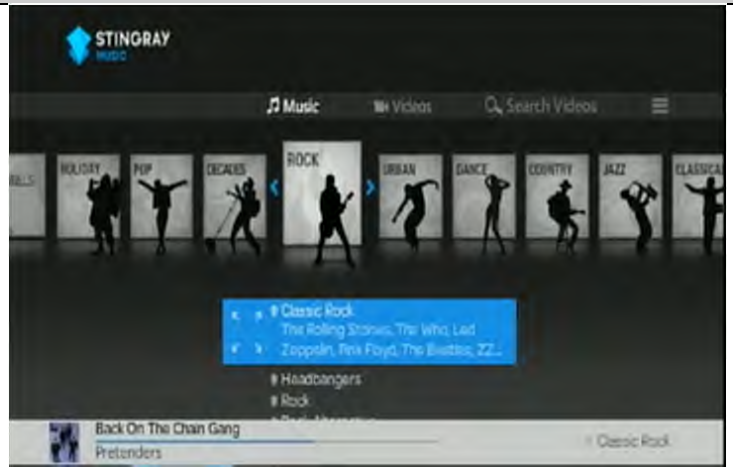
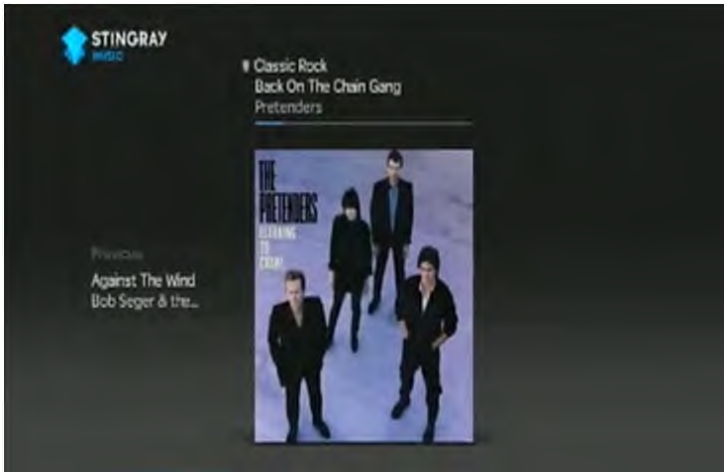
#	'245 Patent	Stingray Music System/Method
		 

Exhibit 2: Stingray's Infringement of the '245 Patent

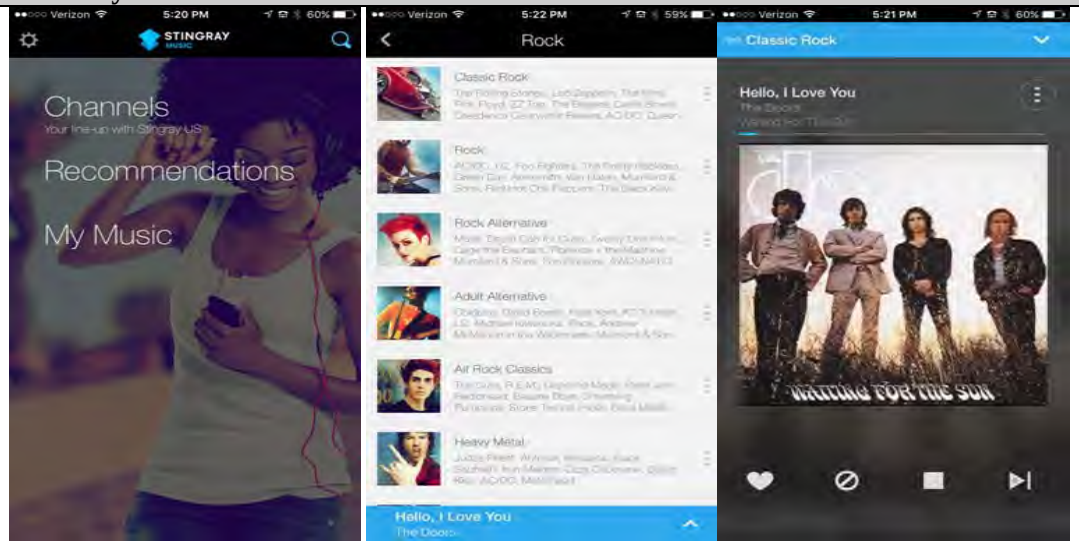
#	'245 Patent	Stingray Music System/Method
		
12b	an audio transmission system configured to transmit audio data corresponding to a sound recording specified in a playlist for a linear audio channel; and	The Stingray Music System includes an audio transmission system configured to transmit audio data corresponding to a sound recording (*e.g.*, audio data corresponding to a sound recording for the song "Back on the Chain Gang" or "Hello, I Love You") specified in a playlist for a linear audio channel (e.g., a classic rock linear audio channel).

Exhibit 2: Stingray's Infringement of the '245 Patent

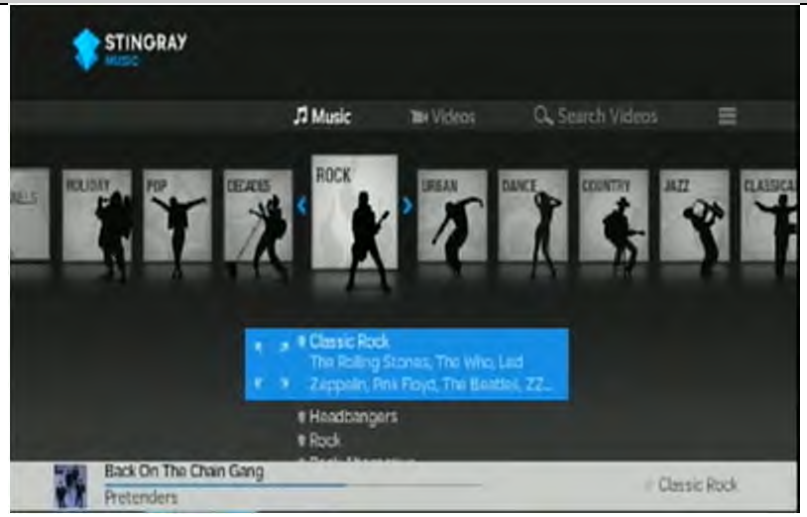
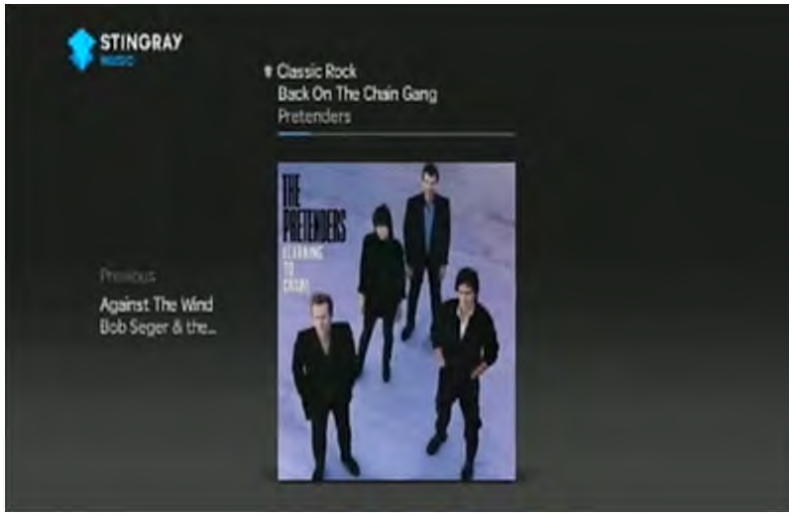
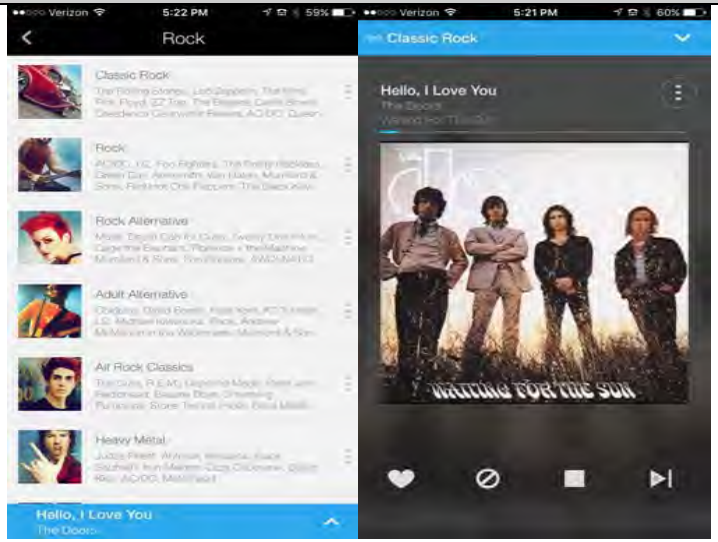
#	'245 Patent	Stingray Music System/Method
		 

Exhibit 2: Stingray's Infringement of the '245 Patent

#	'245 Patent	Stingray Music System/Method
		
12c	a receiving system, comprising a receiver and a video image generator, the receiving system being configured to:	The Stingray Music System includes a receiving system (*e.g.*, the UbiquiCAST broadcast system and/or the AT&T U-verse® system and/or the cellular system and/or a LAN/WAN system, including an end-user device running the Stingray Music app) that includes a receiver and a video image generator.
12d	i) in response to receiving a data packet that was generated using an identifier identifying the	In the Stingray Music System, the receiving system is configured to i) in response to receiving a data packet (*e.g.*, an HTML or XML file) that was generated using an identifier identifying the sound recording (*e.g.*, the sound recording for the song "Back on the Chain Gang" or "Hello, I Love You"), generate a video image (*e.g.*, a video image including (i) the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image or (ii) the song title "Hello, I Love You," the artist name "The Doors," and the associated cover art image) in accordance with information included in the data

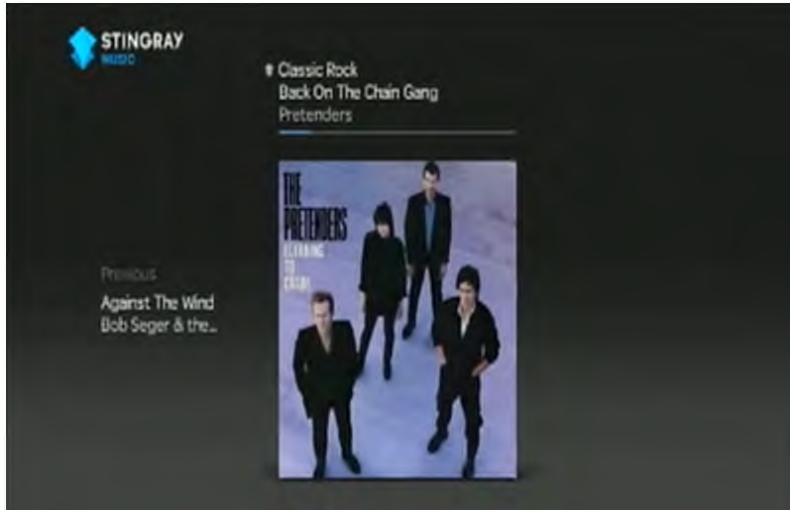
#	'245 Patent	Stingray Music System/Method
	sound recording, generate a video image in accordance with information included in the data packet, wherein the data packet includes a media asset identifier identifying a media asset and further includes sound recording information associated with the sound recording, the sound recording information comprising the title of the sound recording and the name of the artist who recorded the sound recording; and	packet. The data packet includes a media asset identifier identifying a media asset (*e.g.*, a thumbnail cover art image for the song "Back on the Chain Gang" or "Hello, I Love You") and further includes sound recording information associated with the sound recording, the sound recording information comprising the title of the sound recording (*e.g.*, "Back on the Chain Gang" or "Hello, I Love You") and the name of the artist (*e.g.*, the "Pretenders" or "The Doors") who recorded the sound recording. 

Exhibit 2: Stingray's Infringement of the '245 Patent

#	'245 Patent	Stingray Music System/Method
		
12e	ii) automatically output the generated video image such that it is received at a display device operable to display the video image to a user of the display device without the user having to select a menu item , wherein	The receiving system of the Stingray Music System is configured to ii) automatically output the generated video image such that it is received at a display device (*e.g.*, a television or mobile device) operable to display the video image (*e.g.*, the video image including (i) the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image or (ii) the song title "Hello, I Love You," the artist name "The Doors," and the associated cover art image) to a user of the display device without the user having to select a menu item.

Exhibit 2: Stingray's Infringement of the '245 Patent

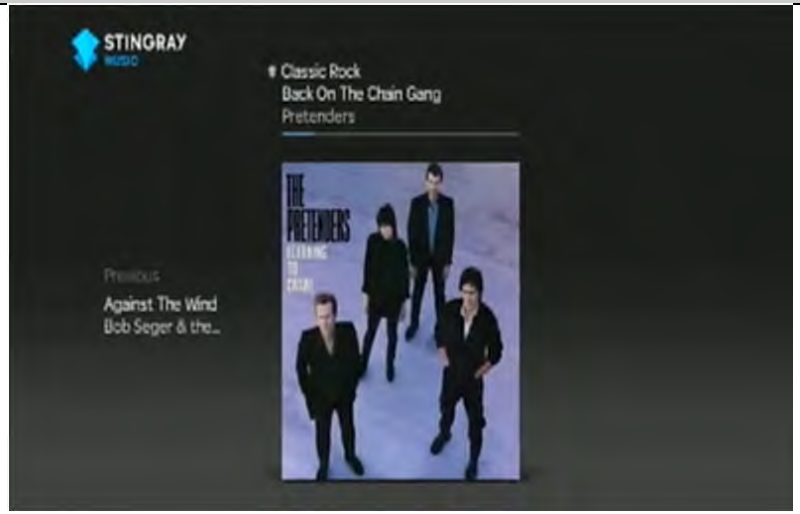
#	'245 Patent	Stingray Music System/Method
		 

Exhibit 2: Stingray's Infringement of the '245 Patent

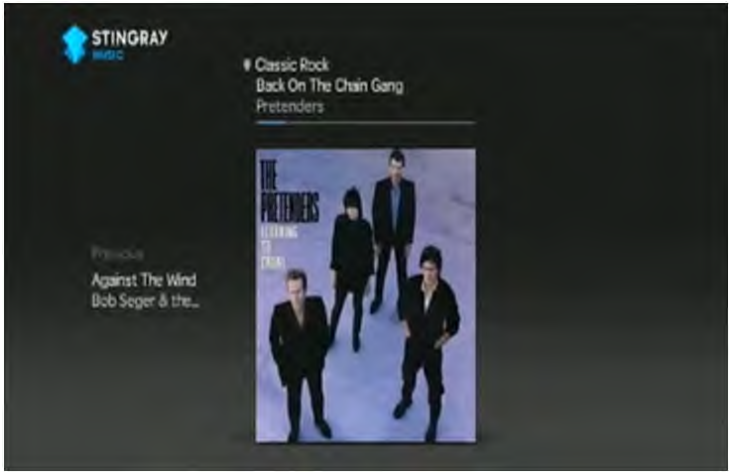
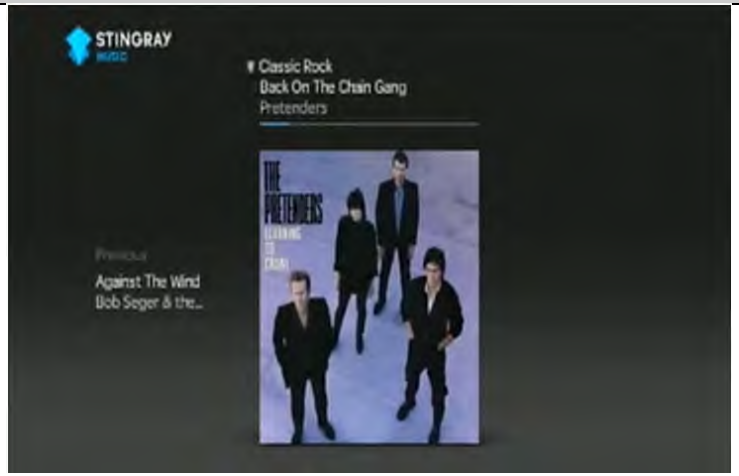
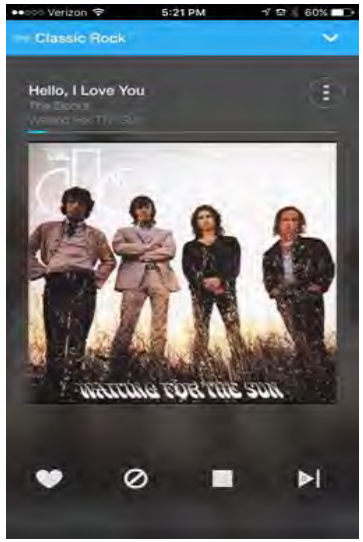
#	'245 Patent	Stingray Music System/Method
12f	the generated video image includes the song information comprising the title of the song and the name of the artist, and	In the Stingray Music System, the generated video image (*e.g.*, the video image including (i) the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image or (ii) the song title "Hello, I Love You," the artist name "The Doors," and the associated cover art image) includes the song information comprising the title of the song (*e.g.*, "Back on the Chain Gang" or "Hello, I Love You") and the name of the artist (*e.g.*, "Pretenders" or "The Doors"). 
12g	the receiving system is configured to retrieve the identified media asset and use the retrieved media asset in generating the video image.	In the Stingray Music System, the receiving system is configured to retrieve the identified media asset (*e.g.*, the thumbnail cover art image for the song "Back on the Chain Gang" or "Hello, I Love You") and use the retrieved media asset in generating the video image (*e.g.*, the video image including (i) the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image or (ii) the song title "Hello, I Love You," the artist name "The Doors," and the associated cover art image).

Exhibit 2: Stingray's Infringement of the '245 Patent

#	'245 Patent	Stingray Music System/Method
		 
13a	13. The system of	*See* claim 12, above.

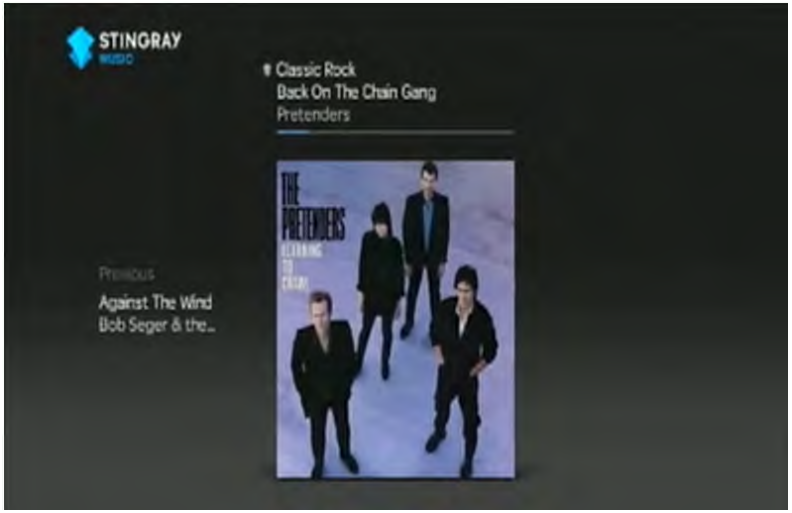
#	'245 Patent	Stingray Music System/Method
	claim 12,	
13b	wherein the data packet further includes information specifying a screen location that is associated with said media asset identifier.	In the Stingray Music System, the data packet further includes information specifying a screen location (*e.g.*, center of the screen) that is associated with said media asset identifier (*e.g.*, identifying the cover art image for the song "Back on the Chain Gang" or "Hello, I Love You"). 

Exhibit 2: Stingray's Infringement of the '245 Patent

#	'245 Patent	Stingray Music System/Method
		
14a	The system of claim 12,	*See* claim 12, above.
14b	wherein the sound recording is a song that falls within a particular category of songs, and said media asset identifier identifies a media asset associated with the particular	In the Stingray Music System, the sound recording is a song (*e.g.*, "Back on the Chain Gang" or "Hello, I Love You") that falls within a particular category of songs (*e.g.*, "Classic Rock" genre), and said media asset identifier identifies a media asset associated with the particular category (*e.g.*, the "Classic Rock" genre name and/or the graphic image).

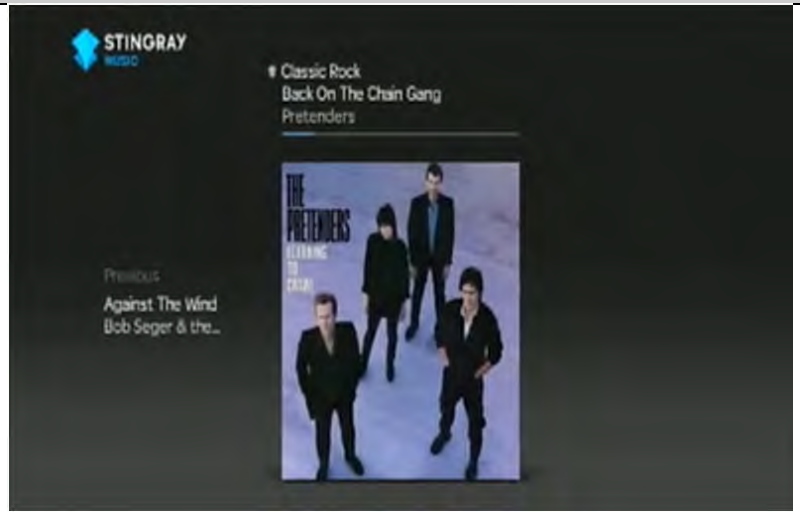
#	'245 Patent	Stingray Music System/Method
	category.	

Exhibit 2: Stingray's Infringement of the '245 Patent

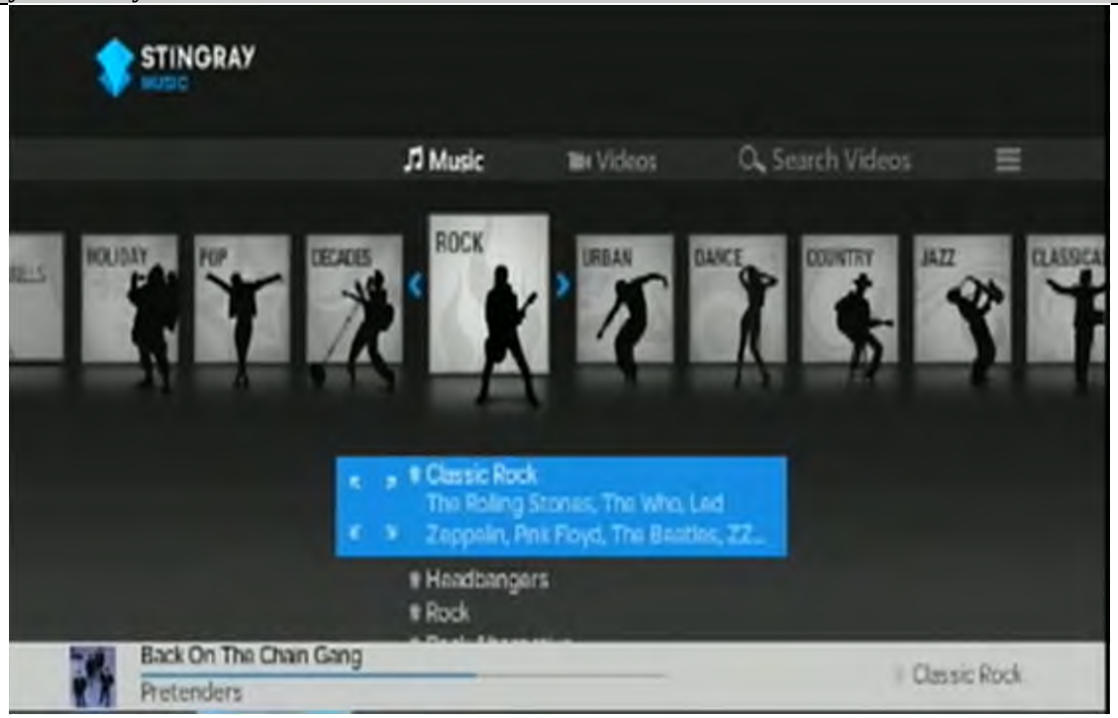
#	'245 Patent	Stingray Music System/Method
		

Exhibit 2: Stingray's Infringement of the '245 Patent

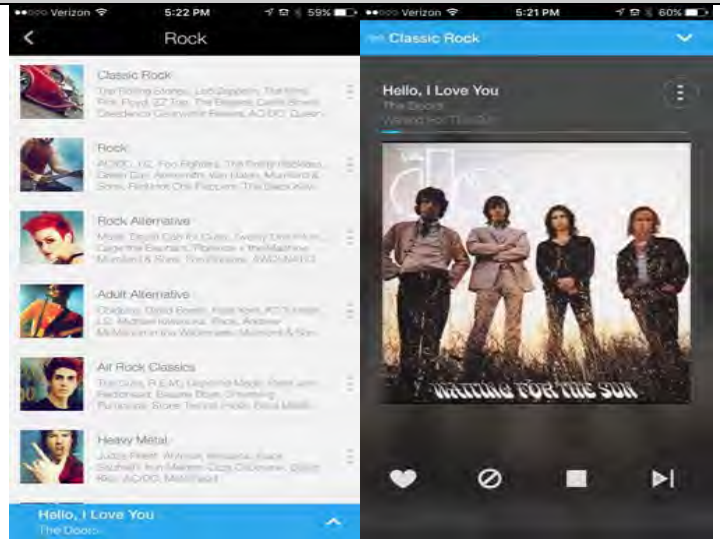
#	'245 Patent	Stingray Music System/Method
		
15a	The system of claim 12,	*See* claim 12, above.
15b	wherein the video image is encoded according to a Moving Pictures Experts Group (MPEG) standard.	The video image (*e.g.*, a video image including (i) the song title "Back on the Chain Gang," and/or the artist name "Pretenders" and the associated cover art image or (ii) the song title "Hello, I Love You," and/or the artist name "The Doors" and the associated cover art image) is encoded according to a Moving Pictures Expert Group (MPEG) standard.

Exhibit 2: Stingray's Infringement of the '245 Patent

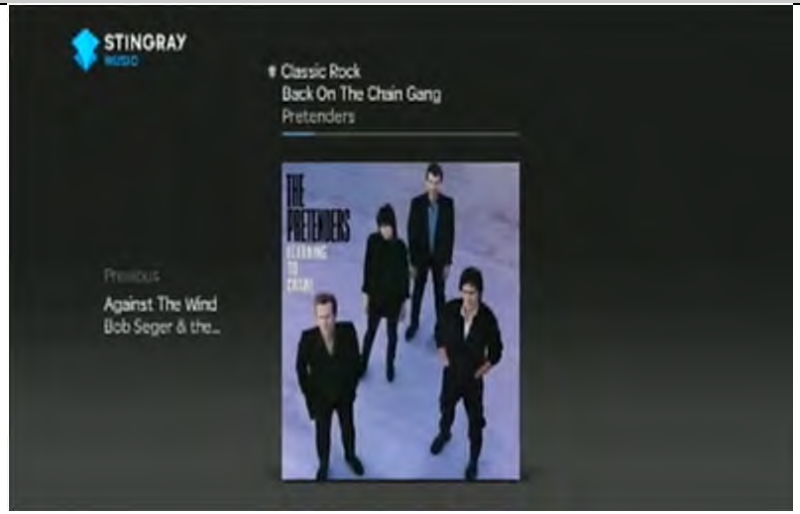
#	'245 Patent	Stingray Music System/Method
		 

Exhibit 2: Stingray's Infringement of the '245 Patent

#	'245 Patent	Stingray Music System/Method
16a	The system of claim 12,	*See* claim 12, above.
16b	wherein said media asset identifier identifies a media asset associated with the sound recording.	The media asset identifier identifies a media asset (*e.g.*, a song title, artist name, and/or album cover art image) associated with the sound recording (*e.g.*, "Back on the Chain Gang" or "Hello, I Love You").
17a	17. A method for providing a visual complement to an audio stream, the method being performed by a music multicast system for providing said audio stream to a plurality of users essentially simultaneously and comprising:	The Stingray Music Method, which uses the Stingray Music TV app on AT&T's U-verse® platform or the Stingray Music mobile app on Apple's iOS platform, is a method for providing a visual complement to an audio stream (*e.g.*, providing a song title, artist name, and/or album cover image as a visual complement to an audio stream for a song). The Stingray Music Method is performed by a music multicast system (*e.g.*, the Stingray UbiquiCAST broadcast system, including the UbiquiCAST music content origin server, and/or the AT&T U-verse® system and/or the cellular system and/or a LAN/WAN system) for providing said audio stream to a plurality of users essentially simultaneously. *See, e.g.*, Stingray Website, "Support," available at http://music.stingray.com/en_US/about/support (last accessed Aug. 4, 2016) ("The Stingray Music website at Stingray Music.tv also has a listing of all songs played in the last 24 hours for each of the Stingray Music channels.") (MC-Stingray00119565).

Exhibit 2: Stingray's Infringement of the '245 Patent

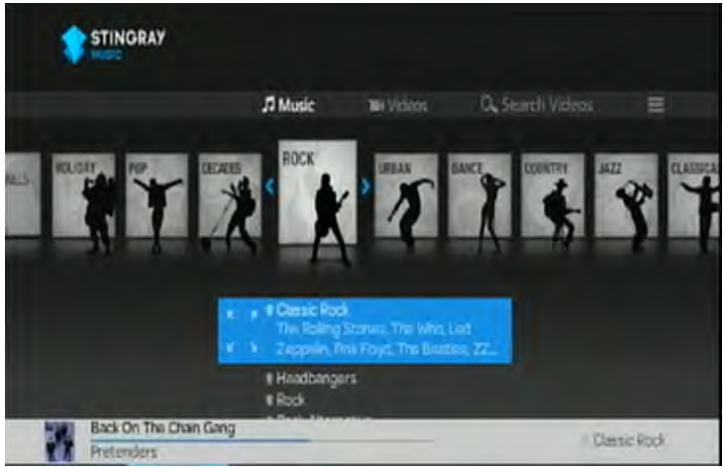
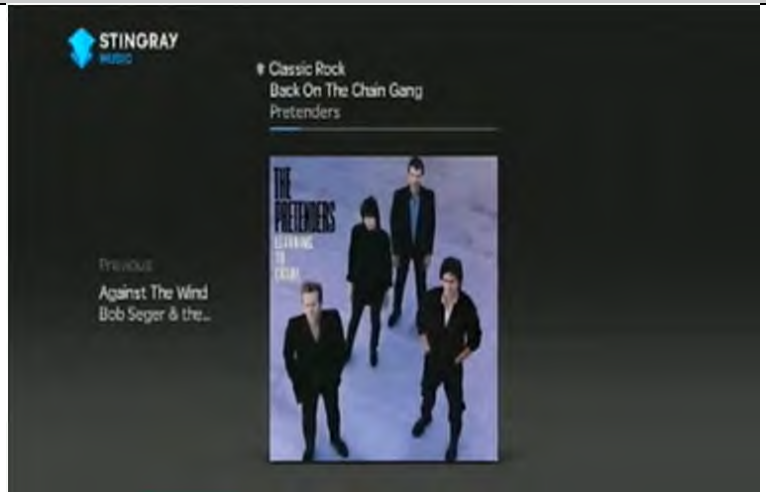
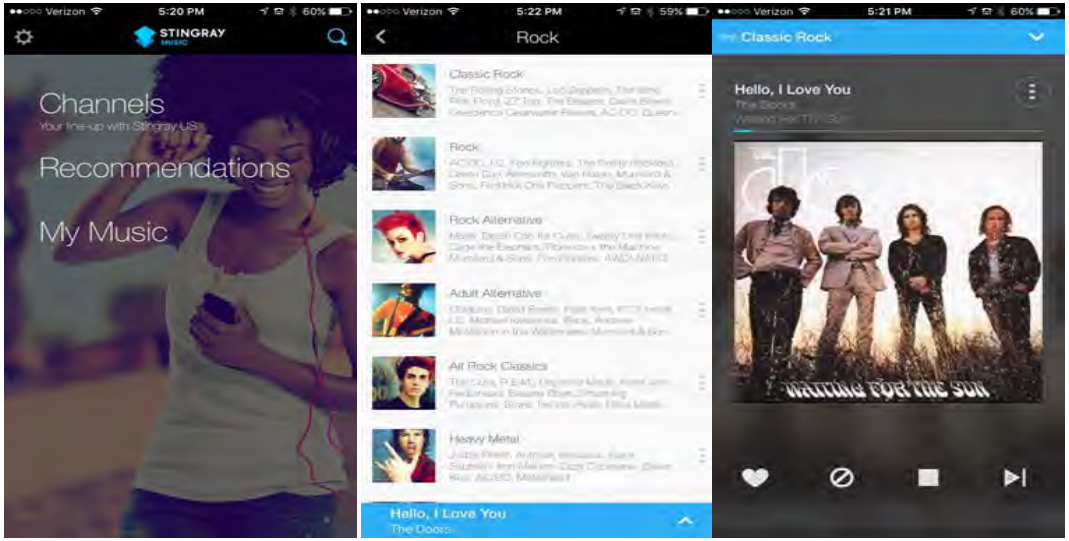
#	'245 Patent	Stingray Music System/Method
		 

Exhibit 2: Stingray's Infringement of the '245 Patent

#	'245 Patent	Stingray Music System/Method
		 

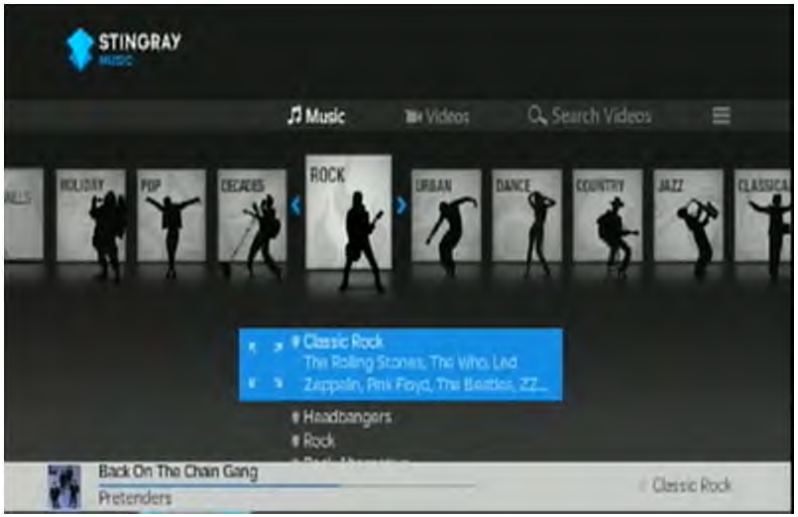
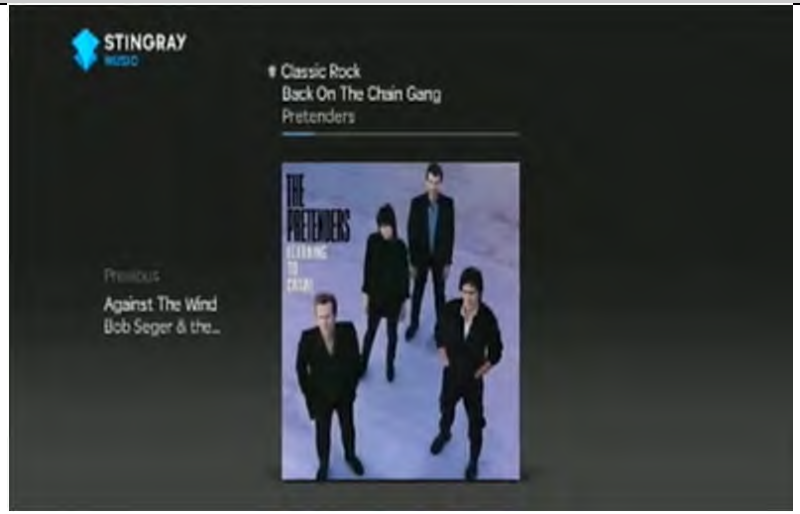
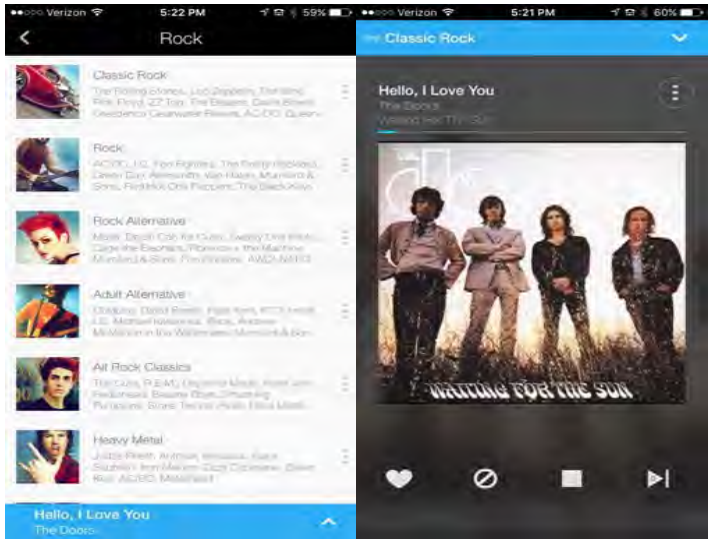
#	'245 Patent	Stingray Music System/Method
17b	the music multicast system automatically selecting a song from a set of available songs;	In the Stingray Music Method, the music multicast system automatically selects a song (*e.g.*, a song "Back on the Chain Gang" or "Hello, I Love You") from a set of available songs (*e.g.*, a set of songs for a classic rock channel). 

Exhibit 2: Stingray's Infringement of the '245 Patent

#	'245 Patent	Stingray Music System/Method
		 

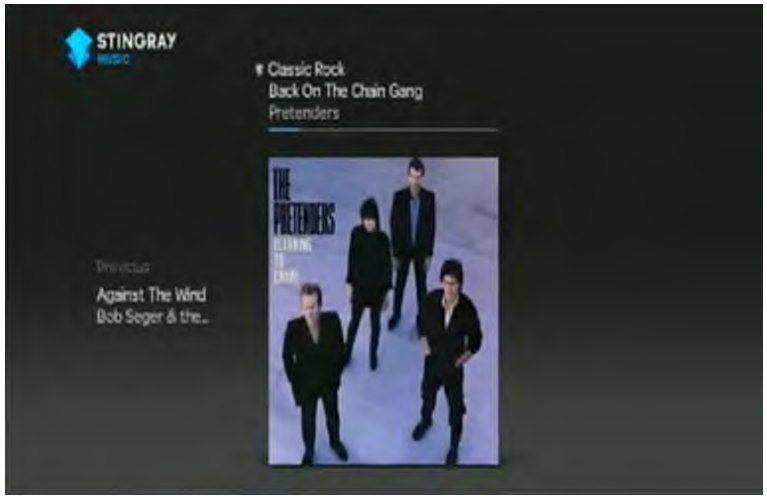
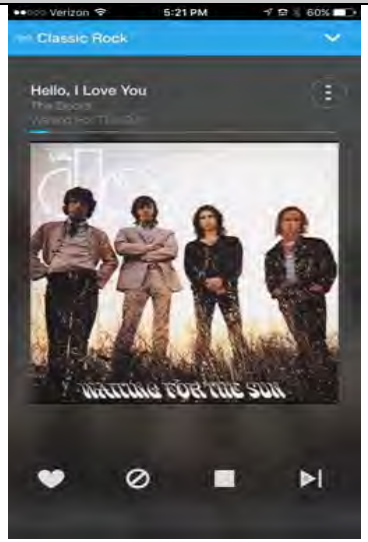
#	'245 Patent	Stingray Music System/Method
17c	the music multicast system generating a data packet based on the selected song, the data packet including a media asset identifier identifying a media asset and further including song information associated with the selected song, the song information comprising the title of the song and the name of the artist who recorded the song;	In the Stingray Music Method, the music multicast system generates a data packet (*e.g.*, an HTML or XML file) based on the selected song (e.g., the song "Back on the Chain Gang" or "Hello, I Love You"), the data packet including a media asset identifier identifying a media asset (*e.g.*, a thumbnail cover art image for the song "Back on the Chain Gang" or "Hello, I Love You") and further including song information associated with the selected song (*e.g.*, the song "Back on the Chain Gang" or "Hello, I Love You"), the song information comprising the title of the song (*e.g.*, "Back on the Chain Gang" or "Hello, I Love You") and the name of the artist who recorded the song (*e.g.*, the "Pretenders" or "The Doors"). 

Exhibit 2: Stingray's Infringement of the '245 Patent

#	'245 Patent	Stingray Music System/Method
		
17d	as a result of automatically selecting the song, transmitting, from a first transmission system to a second transmission system, said audio stream, wherein said audio stream consists of audio data	The Stingray Music Method, as a result of automatically selecting the song, transmits from a first transmission system (*e.g.*, the Stingray UbiquiCAST broadcast system, including the UbiquiCAST music content origin server) to a second transmission system (*e.g.*, the AT&T U-verse® system, a cellular system, and/or a Wireless Area Network (WAN)/Local Area Network (LAN) system), said audio stream. The audio stream consists of audio data corresponding to said selected song (*e.g.*, audio data for the song "Back on the Chain Gang" or "Hello, I Love You").

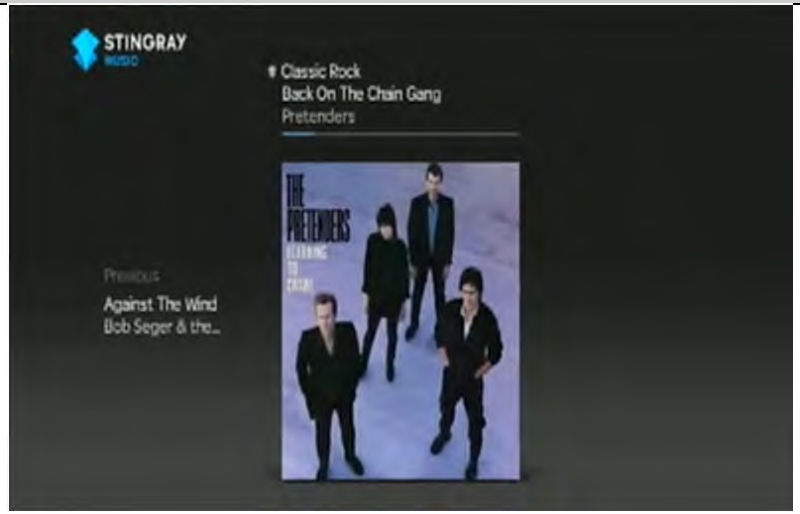
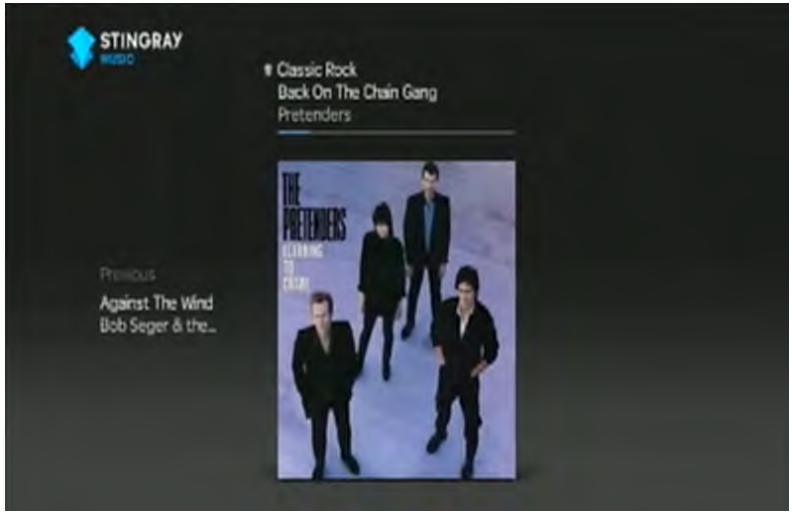
#	'245 Patent	Stingray Music System/Method
	corresponding to said selected song; and	 

Exhibit 2: Stingray's Infringement of the '245 Patent

#	'245 Patent	Stingray Music System/Method
17e	transmitting the data packet to a receiving system, wherein	The Stingray Music Method transmits the data packet (*e.g.*, the HTML or XML file) to a receiving system (*e.g.*, the UbiquiCAST broadcast system and/or the AT&T U-verse® system and/or the cellular system and/or a LAN/WAN system, including an end-user device running the Stingray Music app).
17f	the receiving system is configured such that, in response to receiving the data packet, the receiving system automatically generates a video image using the information included in the data packet and automatically outputs the generated video image such that it is received by a display device that is operable to display the video image to a user of the display device without the user having to select a menu item, and	In the Stingray Music Method, the receiving system is configured such that, in response to receiving the data packet (*e.g.*, the HTML or XML file), the receiving system automatically generates a video image (*e.g.*, a video image including (i) the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image or (ii) the song title "Hello, I Love You," the artist name "The Doors," and the associated cover art image) using the information included in the data packet and automatically outputs the generated video image such that it is received by a display device (*e.g.*, a television or mobile device) that is operable to display the video image (*e.g.*, the video image including (i) the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image or (ii) the song title "Hello, I Love You," the artist name "The Doors," and the associated cover art image) to a user of the display device without the user having to select a menu item. 

#	'245 Patent	Stingray Music System/Method
		
17g	the generated video image includes the song information comprising the title of the song and the name of the artist and a still image identified by the media asset identifier.	In the Stingray music system, the generated video image (e.g., the video image including (i) the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image or (ii) the song title "Hello, I Love You," the artist name "The Doors," and the associated cover art image) output by the receiving system includes the song information comprising the title of the song (*e.g.*, "Back on the Chain Gang" or "Hello, I Love You") and the name of the artist (*e.g.*, "Pretenders" or "The Doors") and a still image identified by the media asset identifier (*e.g.*, the associated cover art image).

Exhibit 2: Stingray's Infringement of the '245 Patent

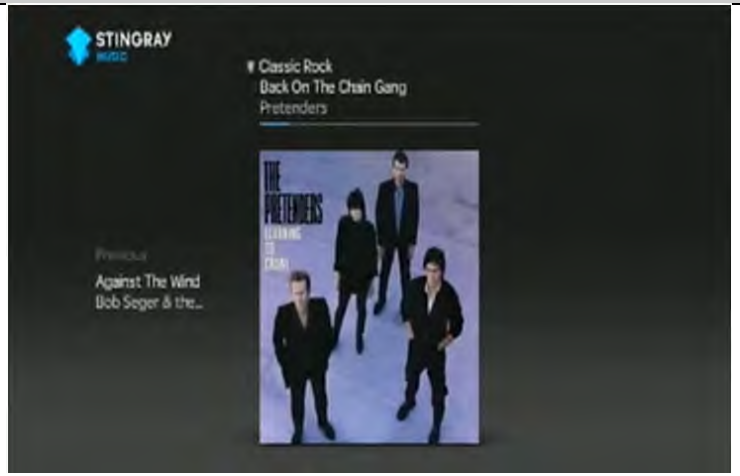
#	'245 Patent	Stingray Music System/Method
		 

EXHIBIT 3

Stingray's Infringement of the '025 Patent

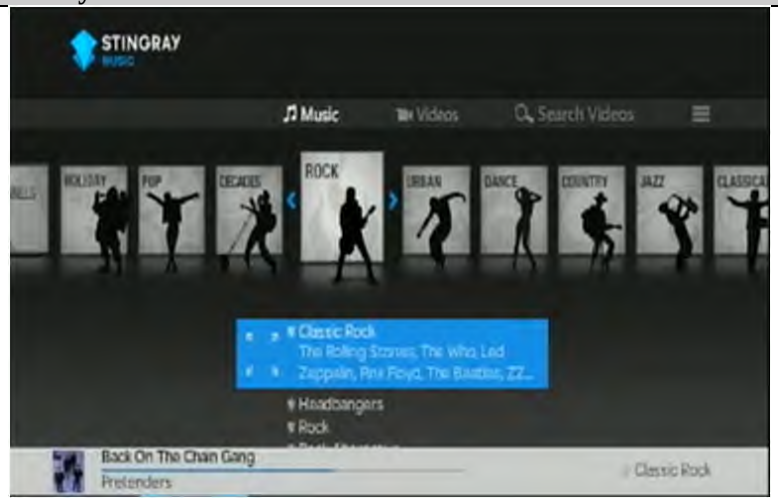
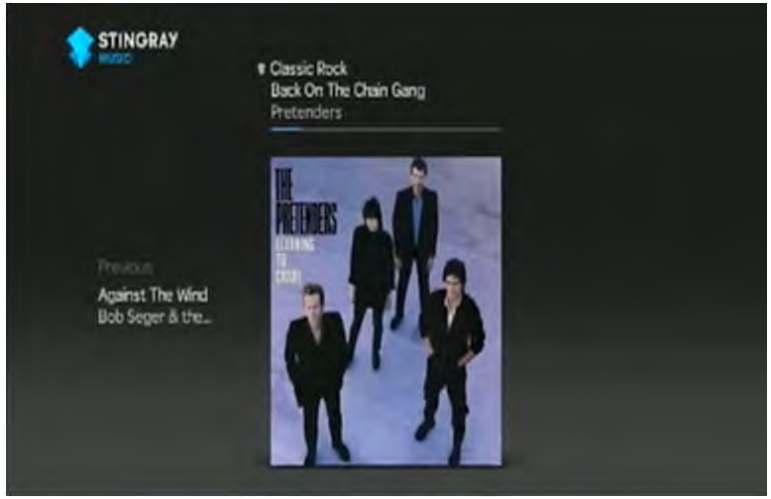
UNITED STATES PATENT NO. 7,320,025 ("the '025 Patent")

This portion of Plaintiff's infringement contentions refers to the Stingray Music TV app that is offered on the AT&T's U-verse® platform as exemplary. These contentions apply to all similar Stingray Music products and services as offered on other platforms[1] (collectively the "Stingray Music System/Method").

#	The '025 Patent	Stingray Music System/Method
1a	1. A method, comprising:	The Stingray Music Method, which uses the Stingray Music TV app on AT&T's U-verse® platform, is a method.
1b	configuring a client system to receive and play music broadcast from a broadcast media source through a broadcast channel;	The Stingray Music Method configures a client system (*e.g.*, an end-user device running the Stingray Music app coupled to a television) to receive and play music (*e.g.*, the song "Back on the Chain Gang" or "Workin' for MCA") broadcast from a broadcast media source (*e.g.*, the UbiquiCAST broadcast system operated by Stingray alone or in conjunction with AT&T U-verse®) through a broadcast channel (*e.g.*, the "Classic Rock" channel). *See, e.g.*, "Stingray Music Brings All Good Vibes to AT&T U-verse® Customers," Oct. 29, 2014, available at about.att.com/story/stingray_music_app_on_uverse_tv.html (last accessed Aug. 4, 2016) ("the new Stingray Music app, available at no additional charge, will have more than 100 streaming music channels") (MC-Stingray00119568); Stingray Website, "Continuous Music Service," available at http://music.stingray.com/en_US/about/baseService (last accessed Aug. 4, 2016) ("The Stingray Music continuous music network provides its listeners with a selection of close to fifty music channels, all commercial-free and uninterrupted, that cover a large variety of music genres, from rock to pop to jazz, to classical or international, delivered in pristine quality digital audio.") (MC-Stingray00119561).

[1] These platforms include, for example, cable operator, satellite, Internet Protocol television (IPTV), mobile, and/or website platforms.

Exhibit 3: Stingray's Infringement of the '025 Patent

#	The '025 Patent	Stingray Music System/Method
		 
1c	receiving application data at the client system, the application data including	In the Stingray Music Method, the client system receives application data that includes a video identifier identifying a video (*e.g.*, an identifier of a music video for the song

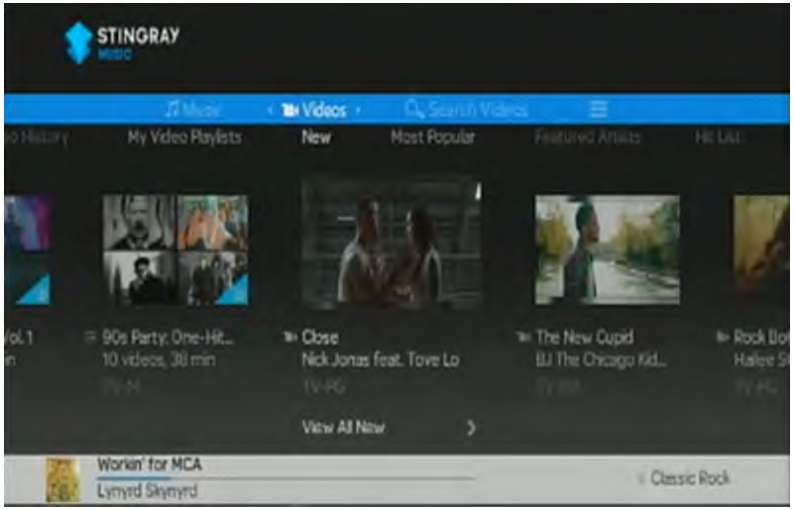
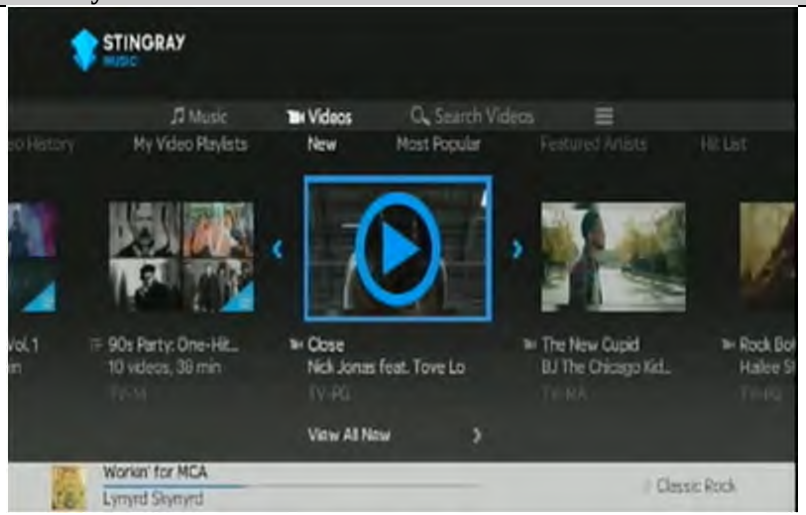
#	The '025 Patent	Stingray Music System/Method
	a video identifier identifying a video, wherein the application data is transmitted with the broadcast music;	"Close"). The application data is transmitted with the broadcast music (*e.g.*, the song "Back on the Chain Gang" or "Workin' for MCA"). 
1d	while the client system is playing the broadcast music, (a) enabling a user of the client system to indicate that the user desires to view the video and (b) receiving an indication that the user desires to view the video;	While the client system is playing the broadcast music (*e.g.*, the song "Workin' for MCA"), the Stingray Music Method (a) enables a user of the client system to indicate that the user desires to view the video (*e.g.*, the music video for the song "Close") and (b) receives an indication that the user desires to view the video (*e.g.*, the music video for the song "Close").

Exhibit 3: Stingray's Infringement of the '025 Patent

#	The '025 Patent	Stingray Music System/Method
		
1e	in response to receiving the indication, automatically ceasing the playing of the broadcast music, transmitting from the client system to an on-demand system the received video identifier, and establishing an on-demand session between the on-demand system and the client system; and	The Stingray Music Method, in response to receiving the indication (*e.g.*, the indication that the user desires to view the music video for the song "Close"), automatically ceases the playing of the broadcast music (*e.g.*, the song "Workin' for MCA"), transmits from the client system to an on-demand system (*e.g.*, the Stingray UbiquiCAST broadcast system, including the UbiquiCAST music content origin server, and/or the AT&T U-verse® system) the received video identifier (*e.g.*, the identifier of the music video for the song "Close"), and establishes an on-demand session between the on-demand system and the client system. *See, e.g.*, Stingray Music Website "Music Videos on Demand Service," available at http://music.stingray.com/en_US/about/MVOD (last accessed Aug. 6, 2016) ("[t]he Stingray Music service offering now includes Music Videos on Demand") (MC-Stingray00119564).

#	The '025 Patent	Stingray Music System/Method
		
1f	after establishing the on-demand session, transmitting from the on-demand system to the client system the identified video, receiving the transmitted video at the client system, and automatically playing the received video in response to receiving the transmitted video from the on-demand system.	The Stingray Music Method, after establishing the on-demand session, transmits from the on-demand system to the client system the identified video (*e.g.*, the music video for the song "Close"), receives the transmitted video at the client system, and automatically plays the received video in response to receiving the transmitted video from the on-demand system.

Exhibit 3: Stingray's Infringement of the '025 Patent

#	The '025 Patent	Stingray Music System/Method
		
3a	3. The method of claim 1, further comprising	*See* claim 1, above.
3b	displaying a button on a display device of the client system while playing the broadcast music.	The Stingray Music Method displays a button (*e.g.*, a "play" button for the song entitled "Close") on a display device of the client system (*e.g.*, a television) while playing the broadcast music (*e.g.*, the song entitled "Working' for MCA").

Exhibit 3: Stingray's Infringement of the '025 Patent

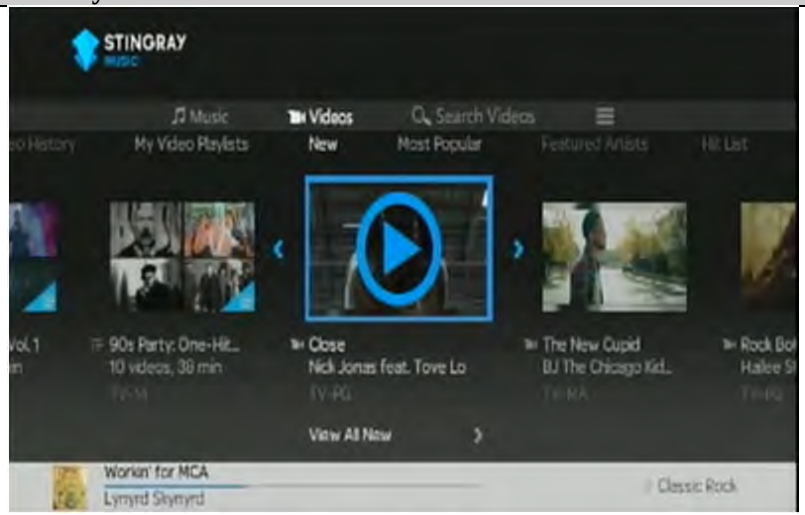
#	The '025 Patent	Stingray Music System/Method
		
4a	4. The method of claim 3,	*See* claim 3, above.
4b	wherein the user indicates that the user desires to view the video by activating the button.	In the Stingray Music Method, the user indicates that the user desires to view the video by activating the button (*e.g.*, the user activates the "play" button for the song entitled "Close").

Exhibit 3: Stingray's Infringement of the '025 Patent

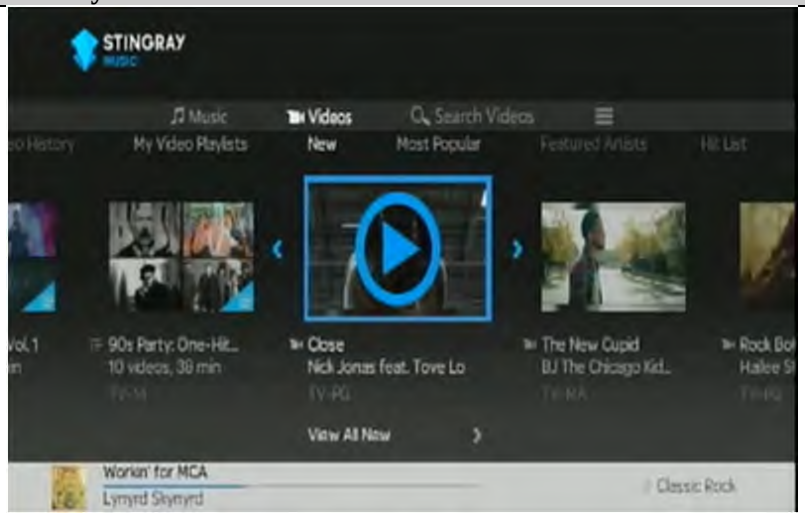
#	The '025 Patent	Stingray Music System/Method
		
8a	8. A video-on-demand method comprising,	The Stingray Music Method, which uses the Stingray Music TV app on AT&T's U-verse® platform, is a video-on-demand method. *See, e.g.*, Stingray Music Website "Music Videos on Demand Service," available at http://music.stingray.com/en_US/about/MVOD (last accessed Aug. 6, 2016) ("[t]he Stingray Music service offering now includes Music Videos on Demand") (MC-Stingray00119564).

Exhibit 3: Stingray's Infringement of the '025 Patent

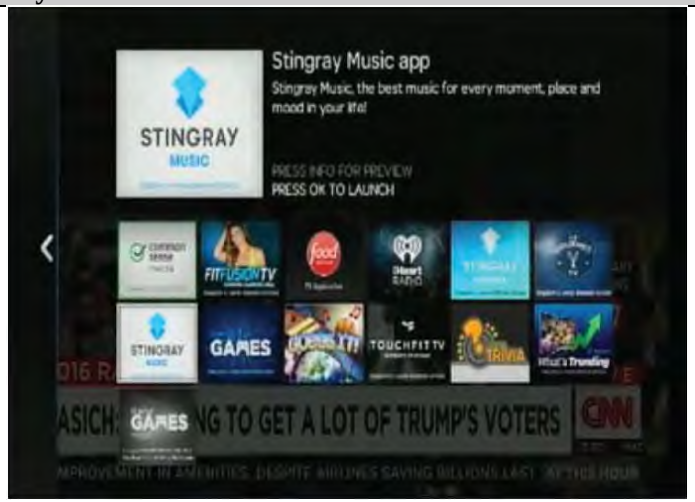
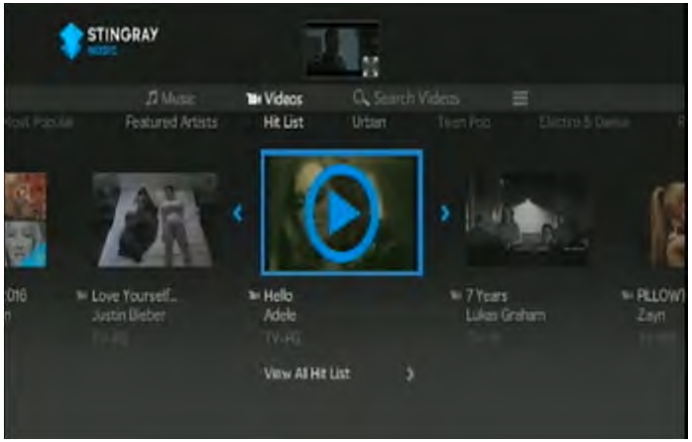
#	The '025 Patent	Stingray Music System/Method
		 
8b	receiving at an on-demand system information indicating that a user desires to view a selected video;	The Stingray Music Method receives, at on-demand system (*e.g.*, the Stingray UbiquiCAST broadcast system, including the UbiquiCAST music content origin server, and/or the AT&T U-verse® system), information indicating that a user desires to view a selected video (*e.g.*, information indicating that a user desires to view a selected music

Exhibit 3: Stingray's Infringement of the '025 Patent

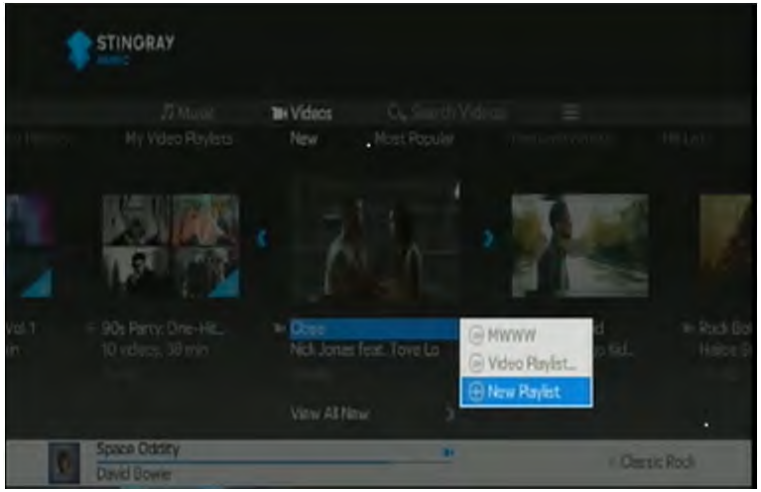
#	The '025 Patent	Stingray Music System/Method
		video for the song entitled "Close" in the form of information indicating that the user desires to create a playlist the music video for the song entitled "Close"). 
8c	creating a playlist, wherein the playlist includes a plurality of media assets, including one media asset corresponding to the selected video;	The Stingray Music Method creates a playlist (*e.g.*, a playlist entitled "p1"). The playlist includes a plurality of media assets (*e.g.*, music videos for songs entitled "Close" and "The New Cupid"), which include one media asset corresponding to the selected video (*e.g.*, the music video for the song entitled "Close").

Exhibit 3: Stingray's Infringement of the '025 Patent

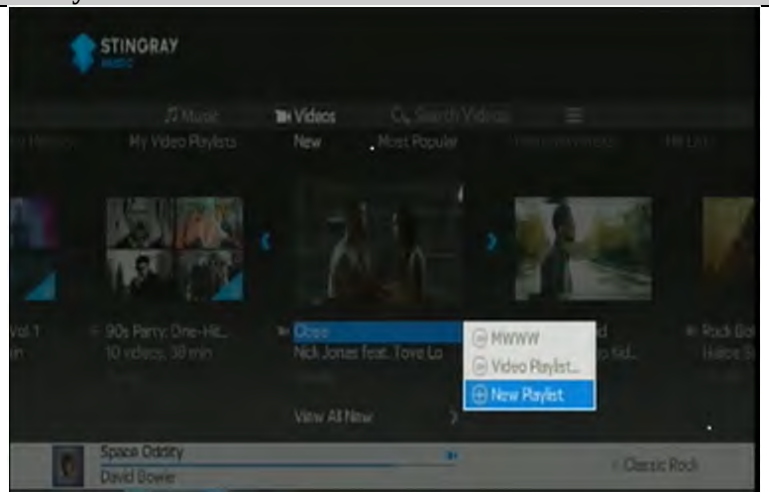
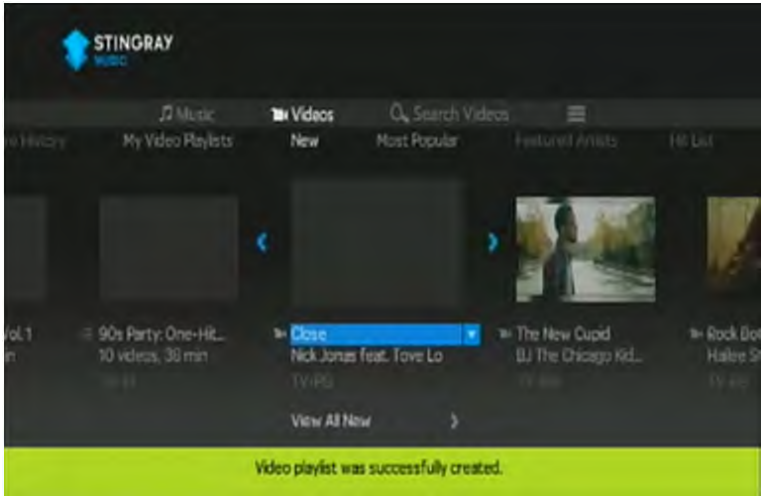
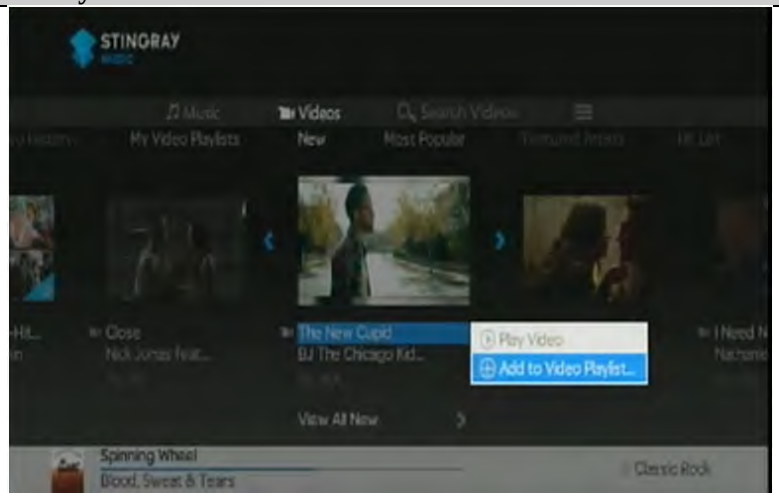
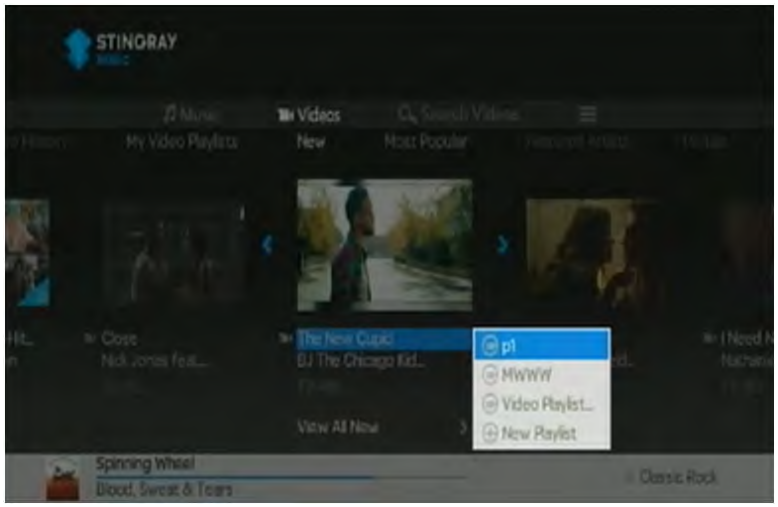
#	The '025 Patent	Stingray Music System/Method
		 

Exhibit 3: Stingray's Infringement of the '025 Patent

#	The '025 Patent	Stingray Music System/Method
		 

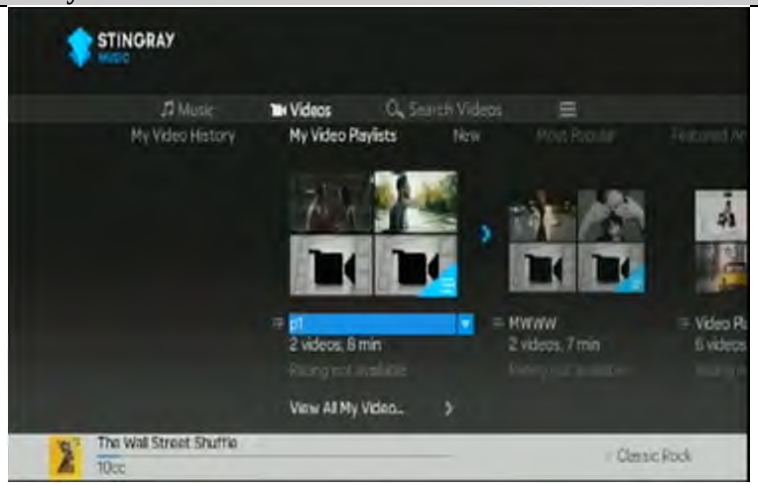
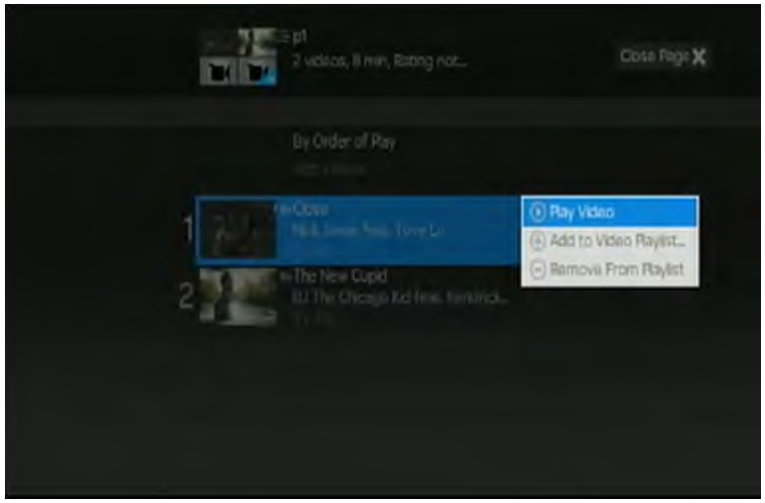
#	The '025 Patent	Stingray Music System/Method
		 
8d	transmitting to a client system a media asset listed in the playlist;	The Stingray Music Method transmits to a client system (*e.g.*, an end-user device running the Stingray Music app coupled to a television) a media asset (*e.g.*, the music

Exhibit 3: Stingray's Infringement of the '025 Patent

#	The '025 Patent	Stingray Music System/Method
		video for the song entitled "Close") listed in the playlist (*e.g.*, the playlist entitled "p1").

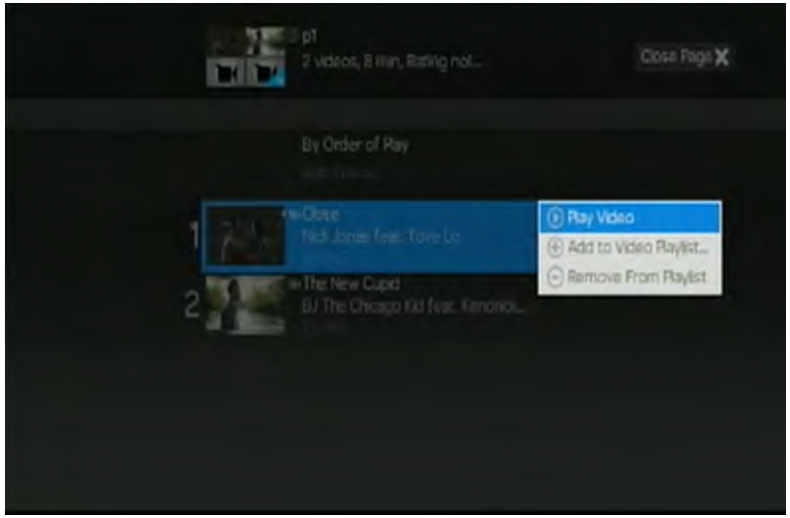


Exhibit 3: Stingray's Infringement of the '025 Patent

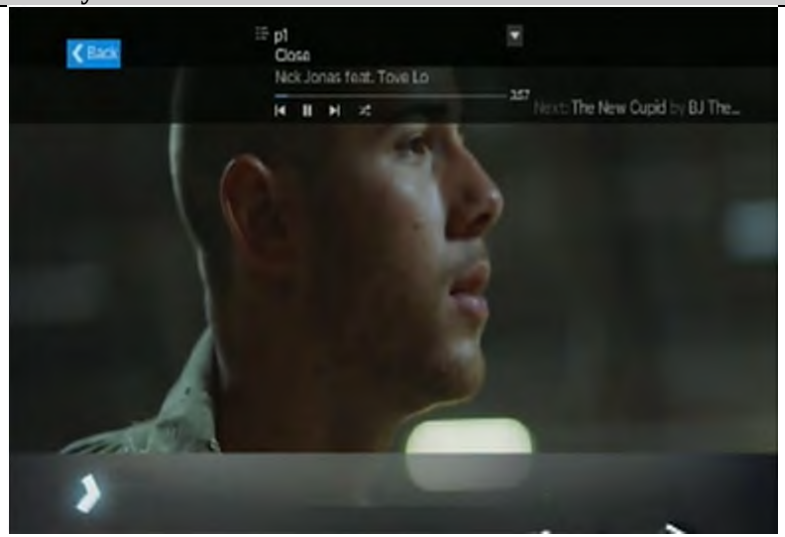
#	The '025 Patent	Stingray Music System/Method
		
8e	transmitting to the client system a video identifier while transmitting to the client system the media asset;	The Stingray Music Method transmits to the client system a video identifier (*e.g.*, a thumbnail identifying a music video for the song entitled "Hello") while transmitting to the client system the media asset (*e.g.*, the music video for the song entitled "Close," which continues to play at the top center of the Stingray Music app screen).

Exhibit 3: Stingray's Infringement of the '025 Patent

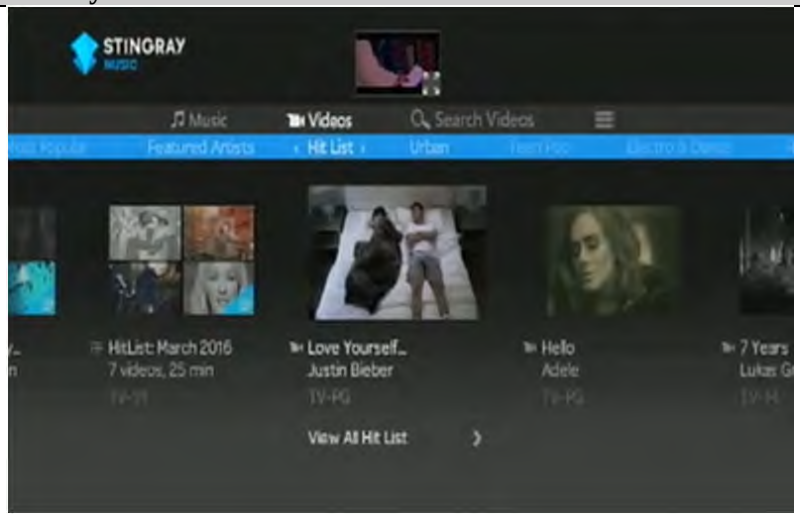
#	The '025 Patent	Stingray Music System/Method
		
8f	while the client system is playing the media asset, (a) enabling a user of the client system to indicate that the user desires to view the video identified by the video identifier and (b) receiving an indication that the user desires to view the video;	The Stingray Music Method, while the client system is playing the media asset (*e.g.*, the music video for the song entitled "Close," which plays at the top center of the Stingray Music app screen), (a) enables a user of the client system to indicate that the user desires to view the video identified by the video identifier (*e.g.*, the music video for the song entitled "Hello") and (b) receives an indication that the user desires to view the video (*e.g.*, the music video for the song entitled "Hello").

Exhibit 3: Stingray's Infringement of the '025 Patent

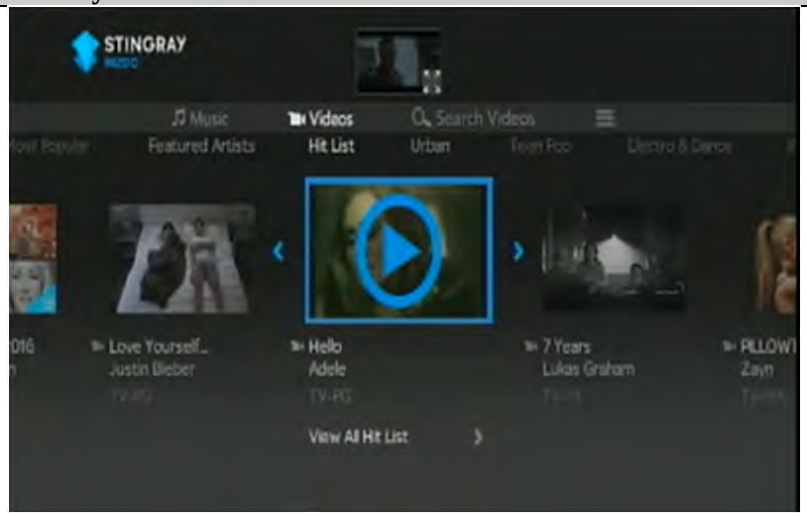
#	The '025 Patent	Stingray Music System/Method
		
8g	receiving from the client system a message including the video identifier, wherein the message is received while at least a portion of the media asset is being transmitted to the client system; and	The Stingray Music Method receives from the client system a message including the video identifier (*e.g.*, the video identifier for the music video for the song entitled "Hello"). The message is received while at least a portion of the media asset is being transmitted to the client system (*e.g.*, while at least a portion of the music video for the song entitled "Close" plays at the top center of the Stingray Music app screen).

Exhibit 3: Stingray's Infringement of the '025 Patent

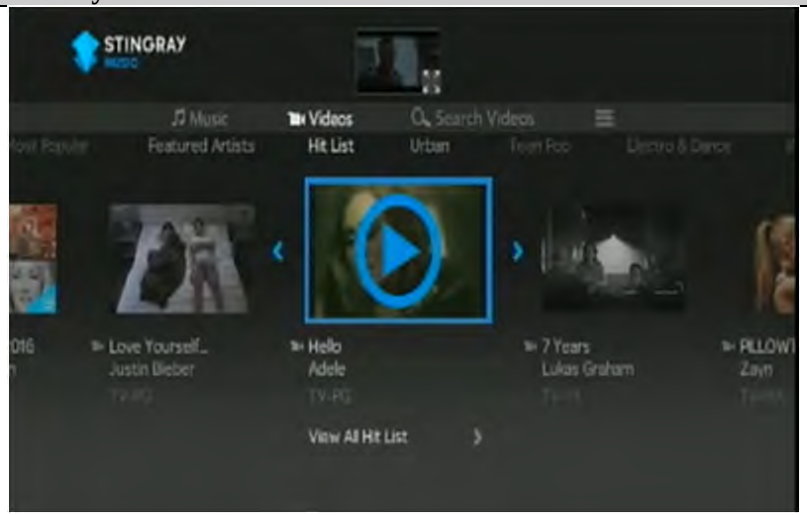
#	The '025 Patent	Stingray Music System/Method
		
8h	in response to receiving the message from the client system, ceasing transmitting the media asset and transmitting the video identified by the video identifier.	The Stingray Music Method, in response to receiving the message from the client system, ceases transmitting the media asset (*e.g.*, the music video for the song entitled "Close") and transmits the video identified by the video identifier (*e.g.*, the music video for the song entitled "Hello").

Exhibit 3: Stingray's Infringement of the '025 Patent

#	The '025 Patent	Stingray Music System/Method
		

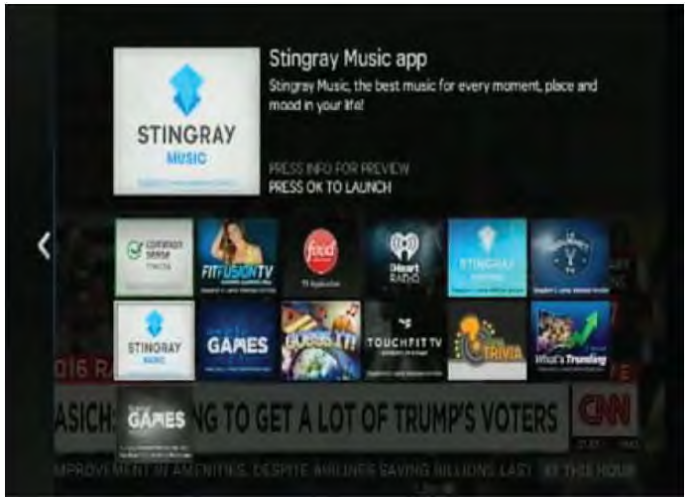
EXHIBIT 4

Stingray's Infringement of the '045 Patent

Exhibit 4: Stingray's Infringement of the '045 Patent

UNITED STATES PATENT NO. 9,351,045 ("the '045 Patent")

This portion of Plaintiff's infringement contentions refers to the Stingray Music TV app that is offered on the AT&T's U-verse® platform as exemplary. These contentions apply to all similar Stingray Music products and services as offered on other platforms[1] (collectively the "Stingray Music System/Method").

#	'045 Patent	Stingray Music System/Method
1a	1. A video-on-demand method, comprising:	The Stingray Music Method, which uses the Stingray Music TV app on AT&T's U-verse® platform, is a video-on-demand method. *See*, *e.g.*, Stingray Music Website "Music Videos on Demand Service," available at http://music.stingray.com/en_US/about/MVOD (last accessed Aug. 6, 2016) ("[t]he Stingray Music service offering now includes Music Videos on Demand") (MC-Stingray00119564). 

[1] These platforms include, for example, cable operator, satellite, Internet Protocol television (IPTV), mobile, and/or website platforms.

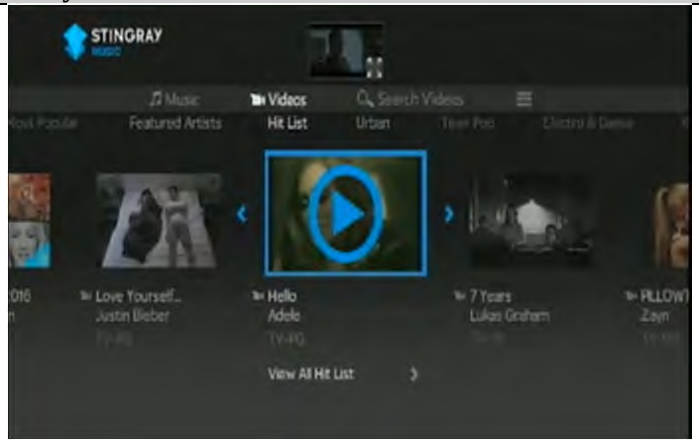
#	'045 Patent	Stingray Music System/Method
		
1b	creating a playlist, wherein the playlist comprises a set of media asset identifiers selected by a user of a client system,	The Stingray Music Method creates a playlist (*e.g.*, a playlist entitled "p1"). The playlist comprises a set of media asset identifiers (*e.g.*, song names identifying music videos for songs entitled "Close" and "The New Cupid") selected by a user of a client system (*e.g.*, an end-user device running the Stingray Music app coupled to a television).

Exhibit 4: Stingray's Infringement of the '045 Patent

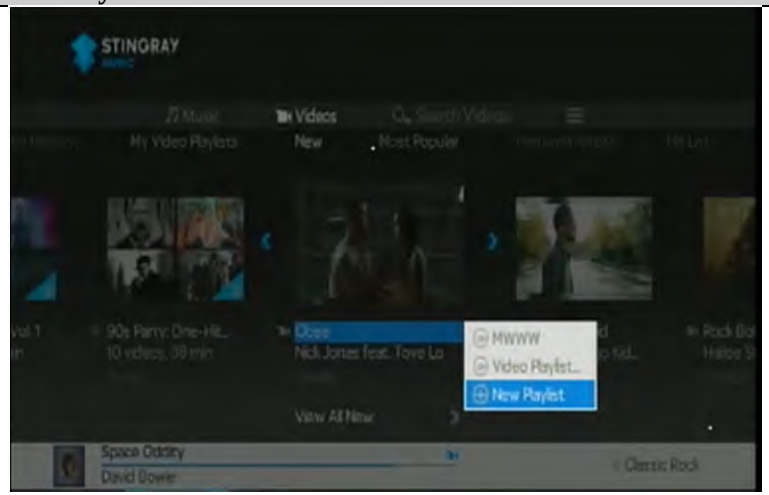
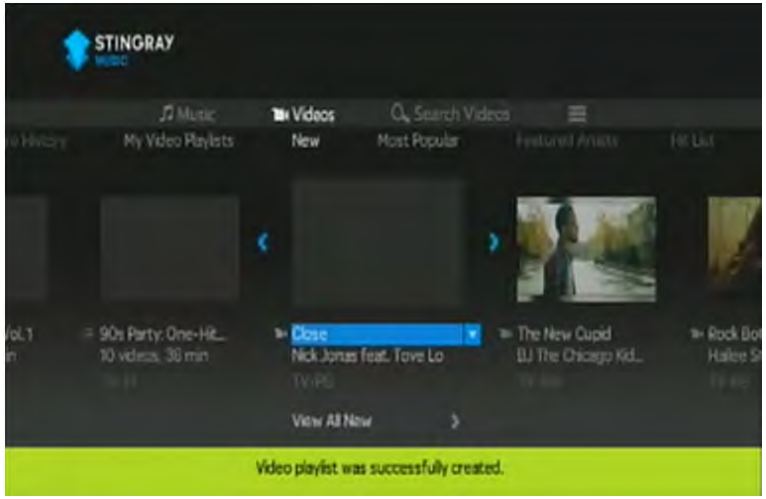
#	'045 Patent	Stingray Music System/Method
		 

Exhibit 4: Stingray's Infringement of the '045 Patent

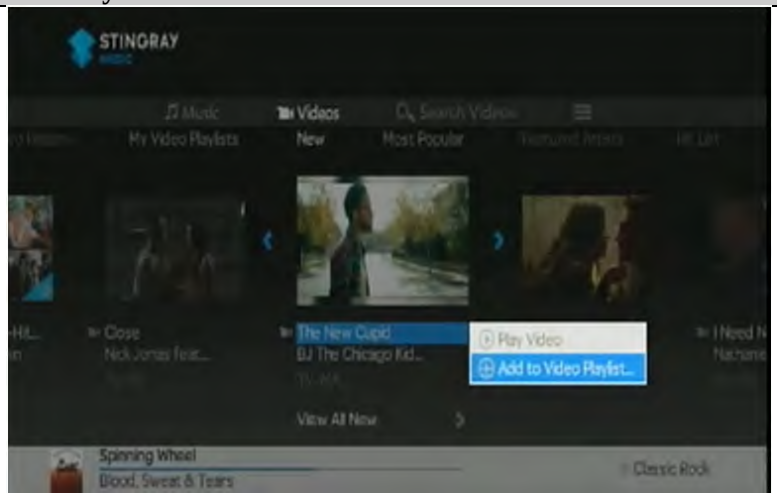
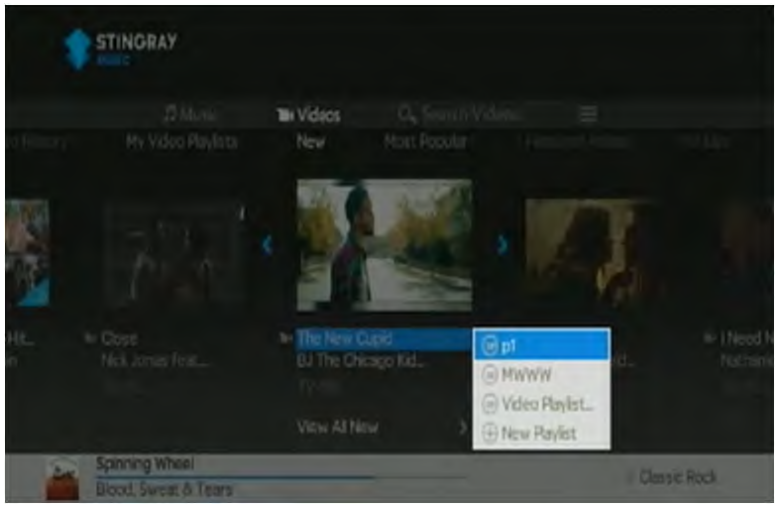
#	'045 Patent	Stingray Music System/Method
		 

Exhibit 4: Stingray's Infringement of the '045 Patent

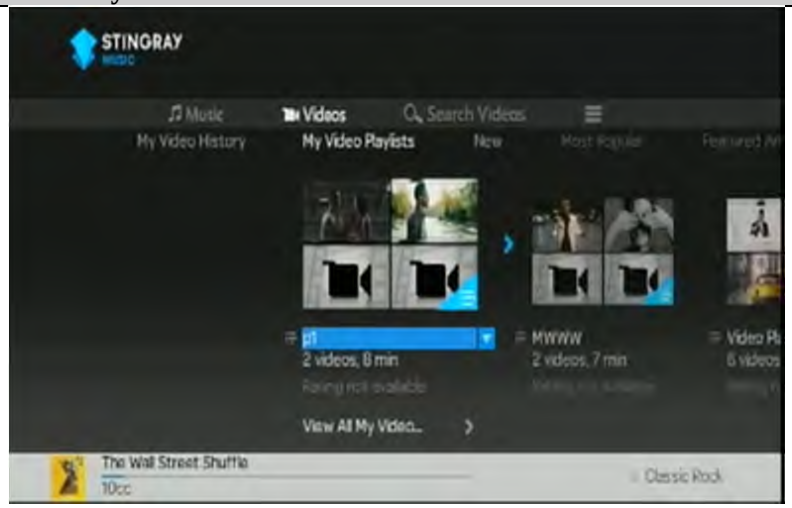
#	'045 Patent	Stingray Music System/Method
		
1c	each media asset identifier included in the set of media asset identifiers identifying a media asset;	In the Stingray Music Method, each media asset identifier included in the set of media asset identifiers identifies a media asset (*e.g.*, each of the song names in the playlist entitled "p1" identifies a music video for a song entitled "Close" or "The New Cupid").

Exhibit 4: Stingray's Infringement of the '045 Patent

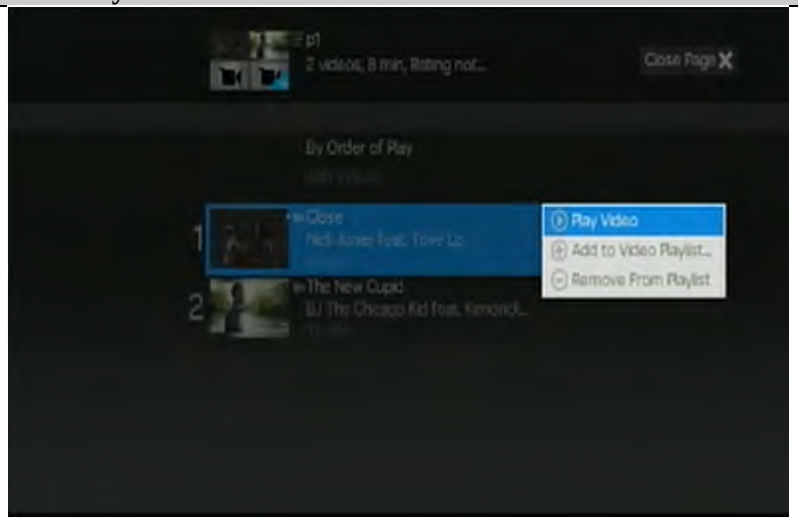
#	'045 Patent	Stingray Music System/Method
		
1d	receiving information transmitted by the client system, the information indicating that a user of the client system desires to view a media asset identified by a media asset identifier included in the playlist;	The Stingray Music Method receives information transmitted by the client system, the information indicating that a user of the client system desires to view a media asset (*e.g.*, the music video for the song entitled "Close") identified by a media asset identifier (*e.g.*, the song name identifying a music video for the song entitled "Close") included in the playlist (*e.g.*, the playlist entitled "p1").

Exhibit 4: Stingray's Infringement of the '045 Patent

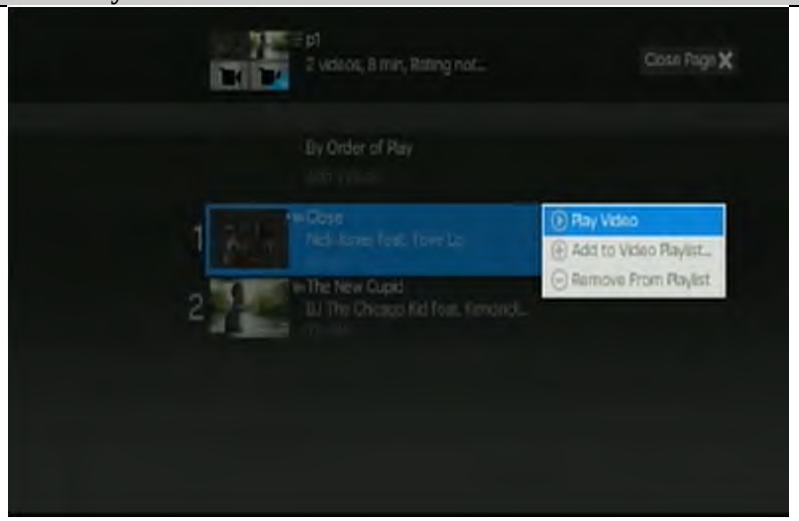
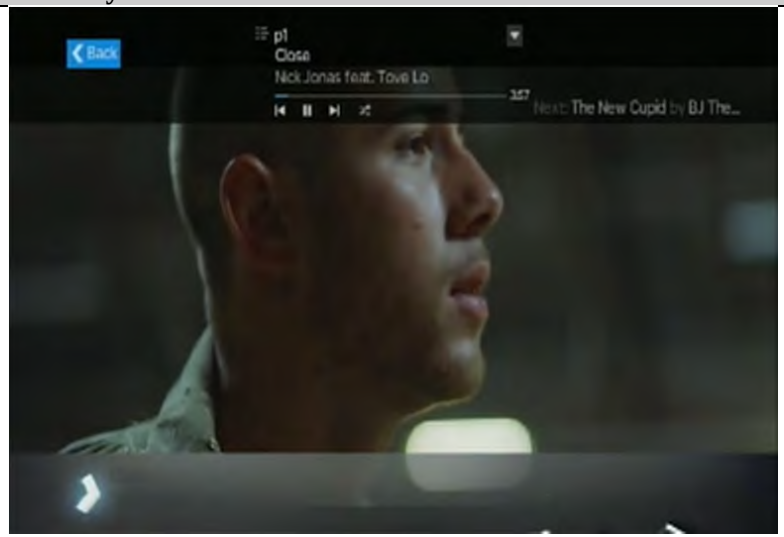
#	'045 Patent	Stingray Music System/Method
		
1e	in response to receiving the information, transmitting to the client system the media asset desired by the user;	The Stingray Music Method, in response to receiving the information, transmits to the client system the media asset desired by the user (*e.g.*, the music video for the song entitled "Close").

Exhibit 4: Stingray's Infringement of the '045 Patent

#	'045 Patent	Stingray Music System/Method
		
1f	transmitting to the client system a video identifier while transmitting to the client system the desired media asset, the video identifier identifying a video;	The Stingray Music Method transmits to the client system a video identifier (*e.g.*, a thumbnail image identifying a music video for the song entitled "Hello") while transmitting to the client system the desired media asset (*e.g.*, the music video for the song entitled "Close," which continues to play at the top center of the Stingray Music app screen), the video identifier identifying a video (*e.g.*, the music video for the song entitled "Hello").

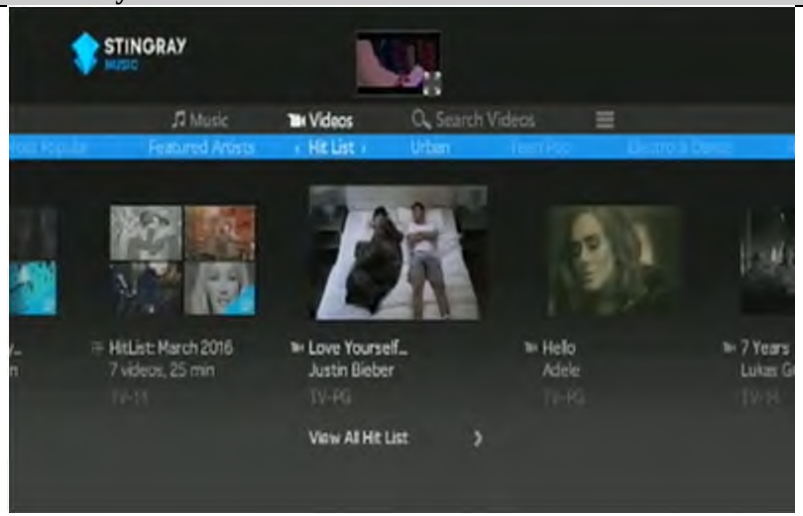
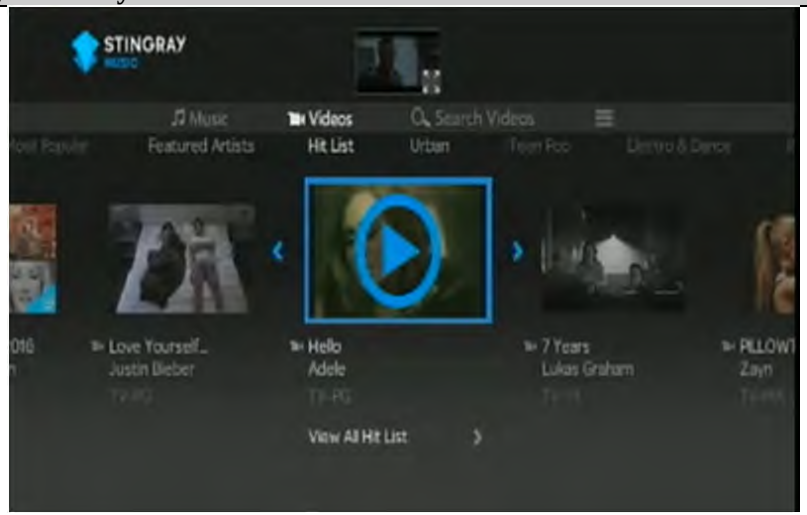
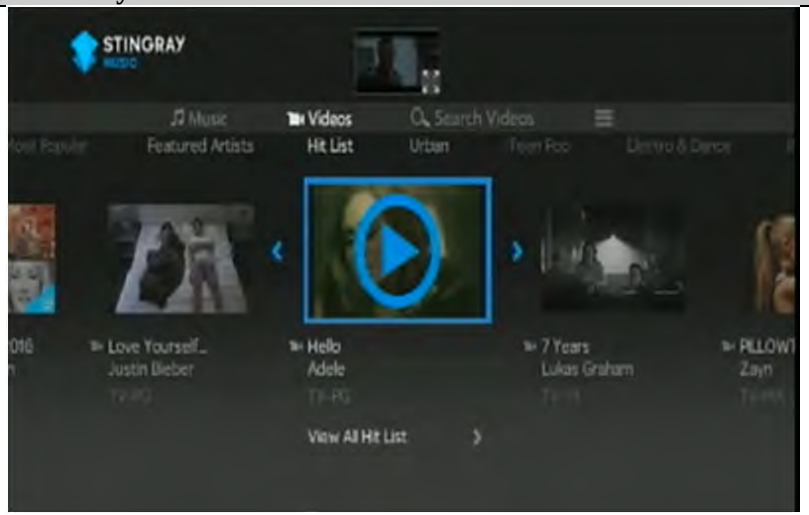
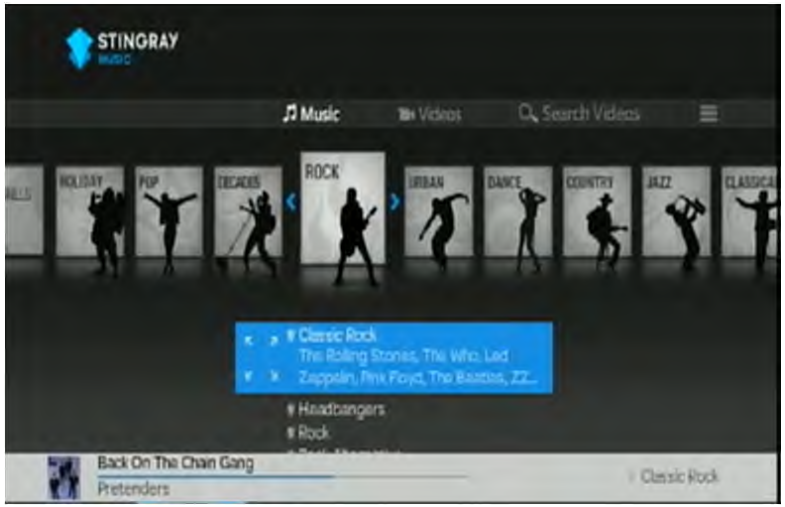
#	'045 Patent	Stingray Music System/Method
		
1g	while the client system is playing the desired media asset enabling the user of the client system to indicate that the user desires to view the video identified by the video identifier, and then receiving from the client system a message comprising information indicating that the user desires to view the video identified by the video identifier, wherein the message is received while at least a portion of the media asset is being transmitted to the client system; and	The Stingray Music Method, while the client system is playing the desired media asset (*e.g.*, the music video for the song entitled "Close," which plays at the top center of the Stingray Music app screen), enables the user of the client system to indicate that the user desires to view the video identified by the video identifier (*e.g.*, the music video for the song entitled "Hello"). The Stingray Music Method then receives from the client system a message comprising information indicating that the user desires to view the video identified by the video identifier (*e.g.*, the music video for the song entitled "Hello"). The message is received while at least a portion of the media asset is being transmitted to the client system (*e.g.*, while at least a portion of the music video for the song entitled "Close" plays at the top center of the Stingray Music app screen).

Exhibit 4: Stingray's Infringement of the '045 Patent

#	'045 Patent	Stingray Music System/Method
		
1h	in response to receiving the message from the client system, ceasing transmitting to the client system the media asset and transmitting to the client system video data corresponding to the video identified by the video identifier.	The Stingray Music Method, in response to receiving the message from the client system, ceases transmitting to the client system the media asset (*e.g.*, the music video for the song entitled "Close") and transmits to the client system video data corresponding to the video identified by the video identifier (*e.g.*, video data corresponding to the music video for the song entitled "Hello").

#	'045 Patent	Stingray Music System/Method
		
2a	The video-on-demand method of claim 1	*See* claim 1, above.
2b	wherein the client system comprises a set-top-box and a television connected to the set-top-box.	In the Stingray Music Method, the client system (*e.g.*, an end-user device running the Stingray Music app coupled to a television) comprises a set-top-box and a television connected to the set-top-box.

#	'045 Patent	Stingray Music System/Method
		
3a	The video-on-demand method of claim 1,	*See* claim 1, above.
3b	wherein each said media asset identifier identifies a music video.	In the Stingray Music Method, each media asset identifier identifies a music video (*e.g.*, song names identifying music videos for songs entitled "Close" and "The New Cupid").
4a	The video-on-demand method of claim 1,	*See* claim 1, above.
4b	wherein the video is a music video.	In the Stingray Music System, the video is a music video (*e.g.*, the music video for the song "Close").
5a	The video-on-demand method of claim 1, further comprising:	*See* claim 1, above.
5b	selecting a song for one of a plurality of music channels, the one	The Stingray Music Method selects a song (*e.g.*, the song "Back on the Chain Gang" or "Workin' for MCA") for one of a plurality of music channels (*e.g.*, a "Classic

#	'045 Patent	Stingray Music System/Method
	of the plurality of music channels being associated with a genre of music;	Rock" channel). *See*, *e.g.*, "Stingray Music Brings All Good Vibes to AT&T U-verse Customers," Oct. 29, 2014, available at about.att.com/story/stingray_music_app_on_uverse_tv.html (last accessed Aug. 4, 2016) ("the new Stingray Music app, available at no additional charge, will have more than 100 streaming music channels") (MC-Stingray00119568); Stingray Website, "Continuous Music Service," available at http://music.stingray.com/en_US/about/baseService (last accessed Aug. 4, 2016) ("The Stingray Music continuous music network provides its listeners with a selection of close to fifty music channels, all commercial-free and uninterrupted, that cover a large variety of music genres, from rock to pop to jazz, to classical or international, delivered in pristine quality digital audio.") (MC-Stingray00119561). The one of the plurality of music channels (*e.g.*, the "Classic Rock" channel) is associated with a genre of music (*e.g.*, the classic rock genre). 

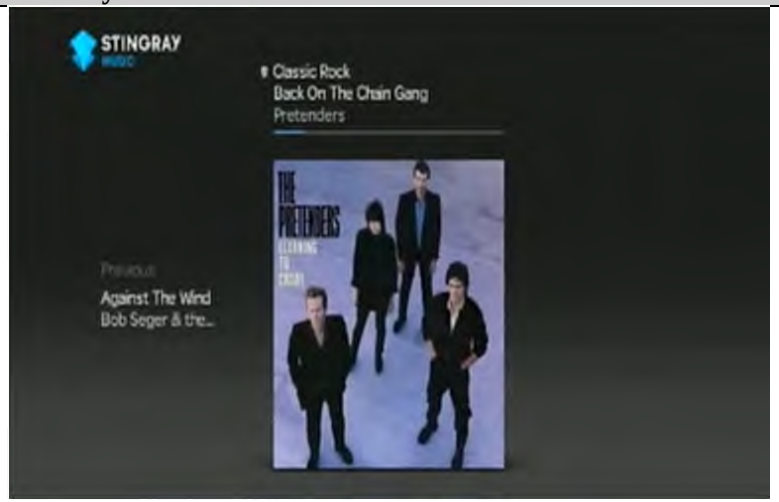
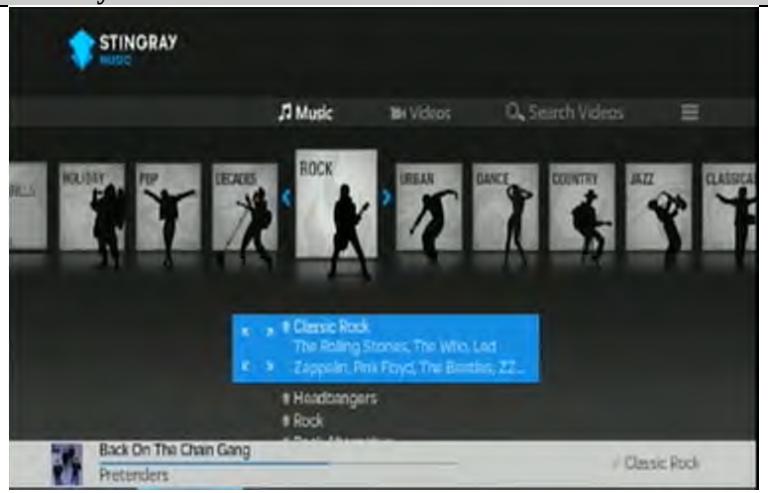
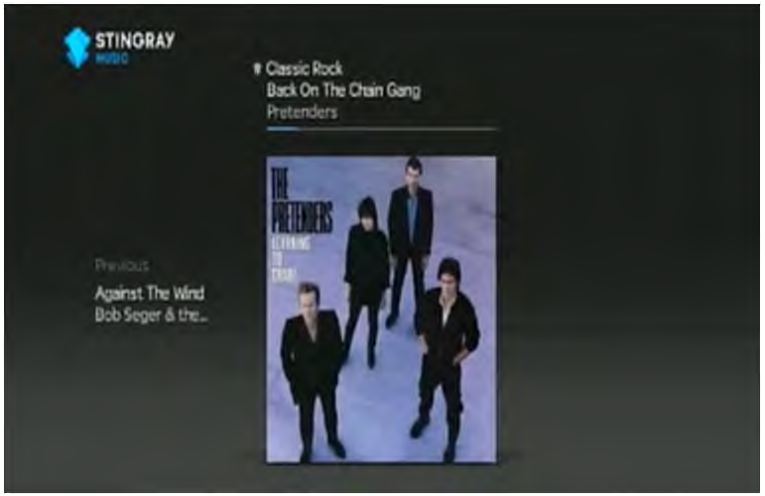
#	'045 Patent	Stingray Music System/Method
		
5c	transmitting simultaneously to a plurality of client systems audio data corresponding to the selected song, wherein each of the plurality of client systems is configured to use the audio data to play the song so that each user of each of the plurality of client systems can listen to the song, and the plurality of client systems comprises the first recited client system and a second client system;	The Stingray Music Method transmits simultaneously to a plurality of client systems (*e.g.*, end-user devices running the Stingray Music app coupled to televisions) audio data corresponding to the selected song (*e.g.*, the song "Back on the Chain Gang" or "Workin' for MCA"). *See, e.g.*, Stingray Website, "Support," available at http://music.stingray.com/en_US/about/support (last accessed Aug. 4, 2016) ("The Stingray Music website at Stingray Music.tv also has a listing of all songs played in the last 24 hours for each of the Stingray Music channels.") (MC-Stingray00119565). Each of the plurality of client systems is configured to use the audio data to play the song (*e.g.*, the song "Back on the Chain Gang" or "Workin' for MCA") so that each user of each of the plurality of client systems can listen to the song. *See id.* The plurality of client systems includes a first client system and a second client system (*e.g.*, first and second end-user devices running the Stingray Music app coupled to televisions).

Exhibit 4: Stingray's Infringement of the '045 Patent

#	'045 Patent	Stingray Music System/Method
		 
5d	while transmitting the audio data to the plurality of client systems, transmitting to the second client	The Stingray Music Method, while transmitting the audio data (*e.g.*, the audio data for the song "Workin' for MCA") to the plurality of client systems, transmits to the second client system a second video identifier identifying a video (*e.g.*, a thumbnail

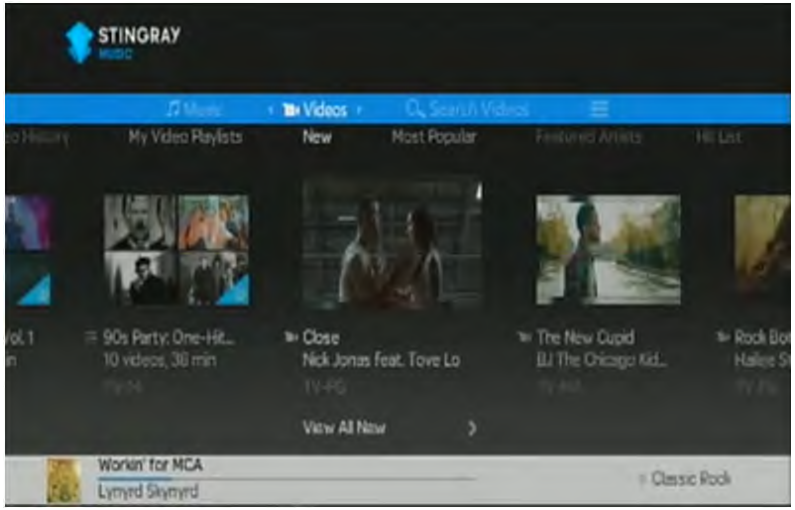
#	'045 Patent	Stingray Music System/Method
	system a second video identifier identifying a second video;	identifying a music video for the song "Close"). 
5e	while the second client system is playing the song enabling the user of the second client system to indicate that the user desires to view the second video identified by the second video identifier, and then receiving from the second client system a message comprising information indicating that the user desires to view the second video identified by the second video identifier, wherein the message is received while at least a portion of the audio data is being transmitted to the second client system; and	The Stingray Music Method, while the second client system is playing the song (*e.g.*, the song "Workin' for MCA"), enables the user of the second client system to indicate that the user desires to view the second video identified by the second video identifier (*e.g.*, the music video for the song "Close"). The Stingray Music Method then receives from the second client system a message comprising information indicating that the user desires to view the second video identified by the second video identifier (*e.g.*, the music video for the song "Close"). The message is received while at least a portion of the audio data (*e.g.*, the audio data for the song "Workin' for MCA") is being transmitted to the first client system.

Exhibit 4: Stingray's Infringement of the '045 Patent

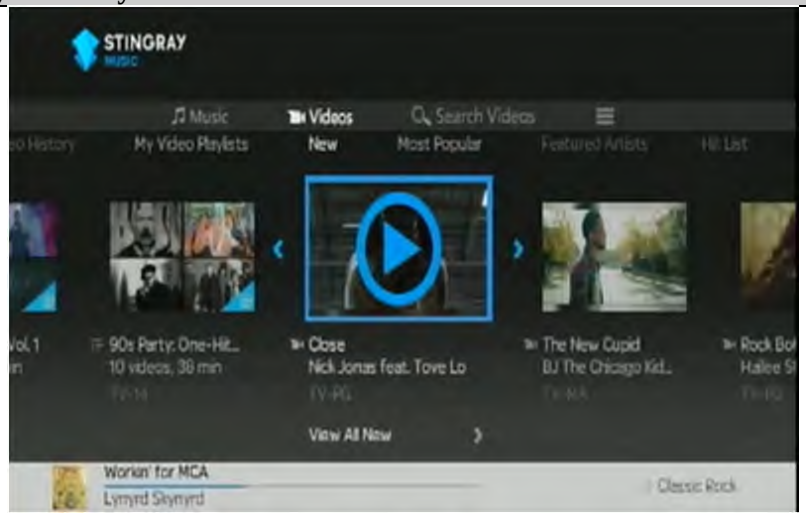
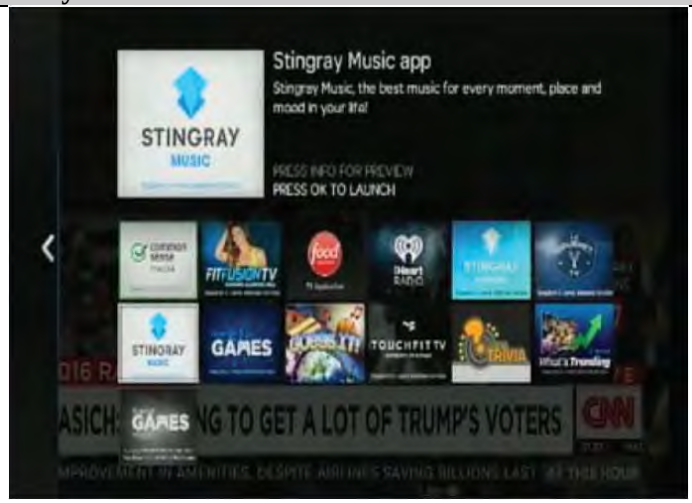
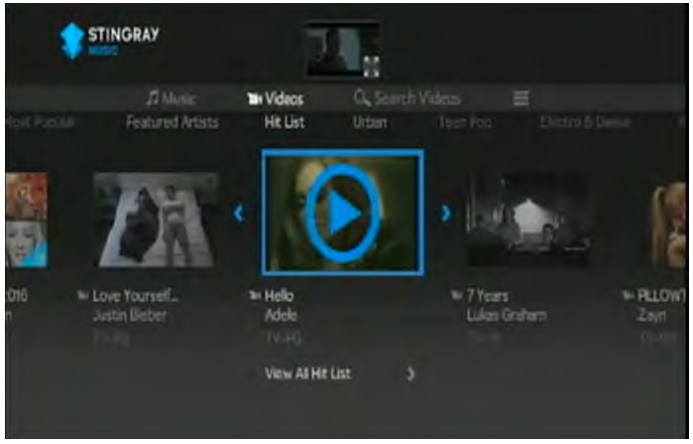
#	'045 Patent	Stingray Music System/Method
		
5f	in response to receiving the message from the second client system, transmitting to the second client system video data corresponding to the second video identified by the second video identifier.	The Stingray Music Method, in response to receiving the message from the second client system, transmits to the second client system video data corresponding to the video identified by the video identifier (*e.g.*, video data corresponding to the music video for the song "Close").

Exhibit 4: Stingray's Infringement of the '045 Patent

#	'045 Patent	Stingray Music System/Method
		
6a	6. A video-on-demand system, the video on demand system comprising:	The Stingray Music System, which includes the Stingray Music TV app on AT&T's U-verse® platform, is a video-on-demand system. *See*, *e.g.*, Stingray Music Website "Music Videos on Demand Service," available at http://music.stingray.com/en_US/about/MVOD (last accessed Aug. 6, 2016) ("[t]he Stingray Music service offering now includes Music Videos on Demand") (MC-Stingray00119564).

Exhibit 4: Stingray's Infringement of the '045 Patent

#	'045 Patent	Stingray Music System/Method
		 
6b	a transmitter;	The Stingray Music System comprises a transmitter.
6c	a receiver; and	The Stingray Music System comprises a receiver.

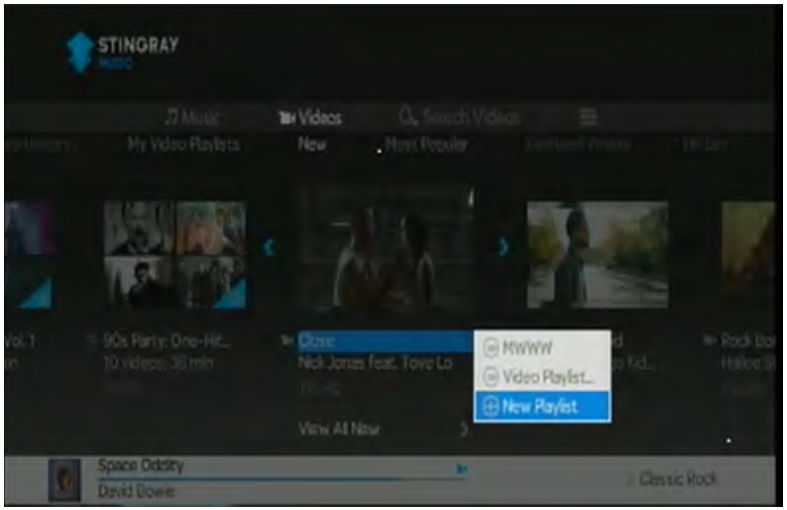
#	'045 Patent	Stingray Music System/Method
6d	a computer system coupled to the transmitter and the receiver, wherein the computer system is configured to perform a method comprising:	The Stingray Music System comprises a computer system coupled to the transmitter and the receiver, and the computer system is configured to perform a method.
6e	creating a playlist, wherein the playlist comprises a set of media asset identifiers selected by a user of a client system,	The computer system of the Stingray Music System creates a playlist (*e.g.*, a playlist entitled "p1"). The playlist comprises a set of media asset identifiers (*e.g.*, media asset identifiers identifying music videos for songs entitled "Close" and "The New Cupid") selected by a user of a client system (*e.g.*, an end-user device running the Stingray Music app coupled to a television). 

Exhibit 4: Stingray's Infringement of the '045 Patent

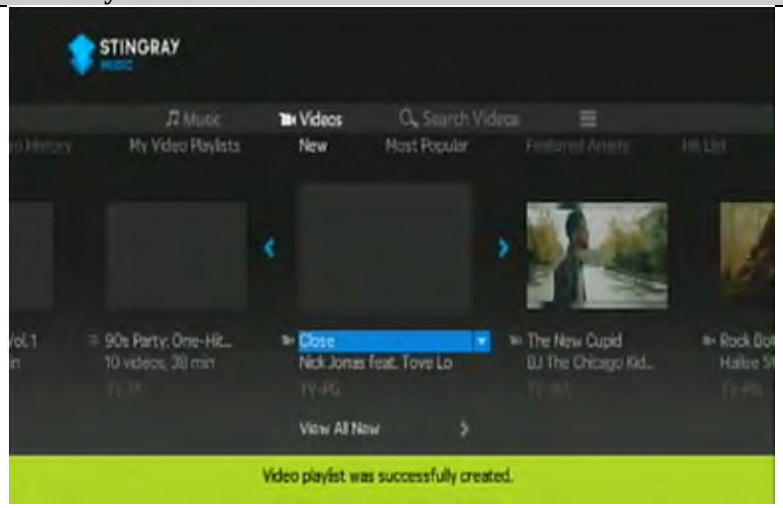
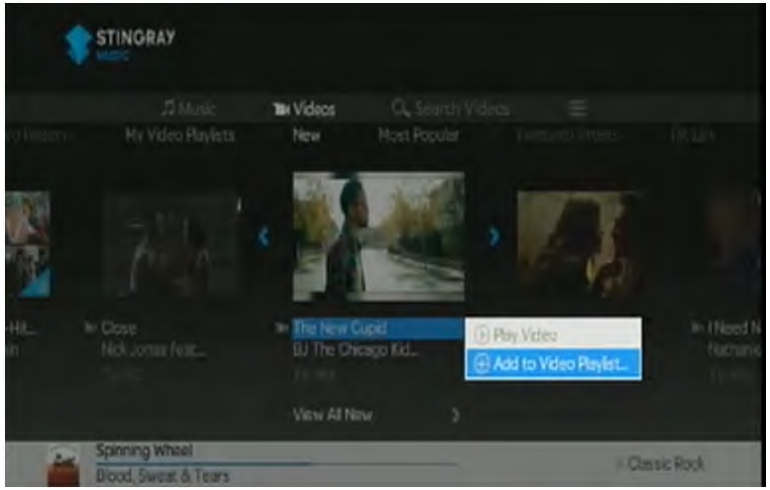
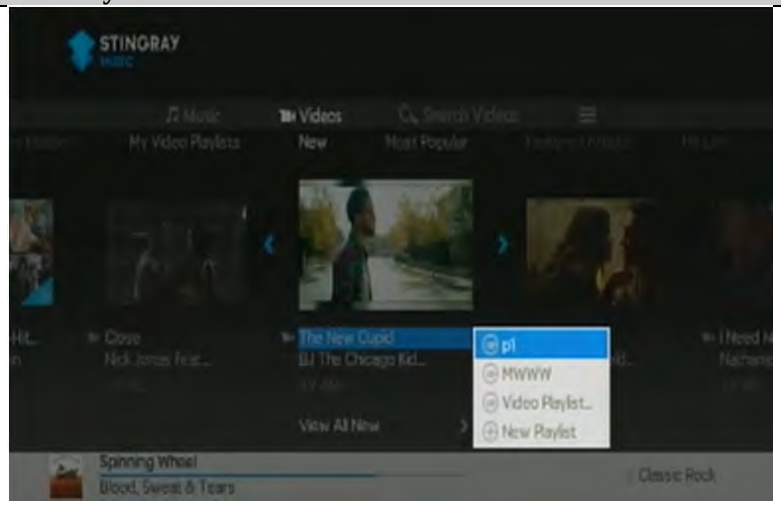
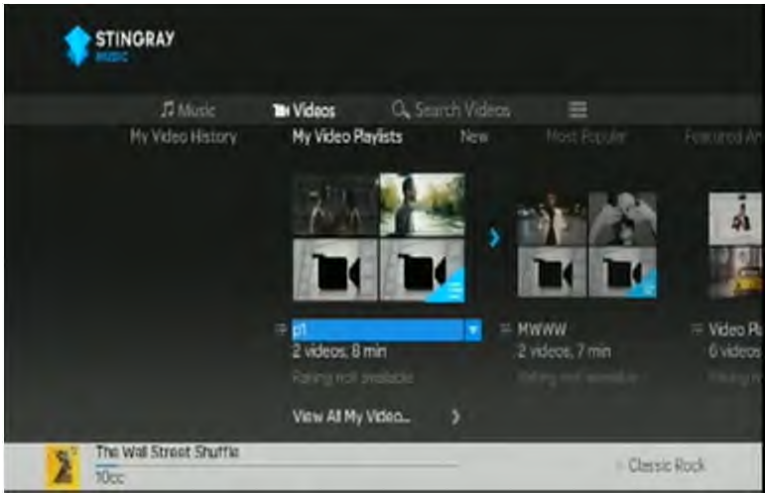
#	'045 Patent	Stingray Music System/Method
		 

Exhibit 4: Stingray's Infringement of the '045 Patent

#	'045 Patent	Stingray Music System/Method
		 
6f	each media asset identifier included in the set of media asset identifiers	In the Stingray Music System, each media asset identifier included in the set of media asset identifiers identifies a media asset (*e.g.*, each of the song names in the

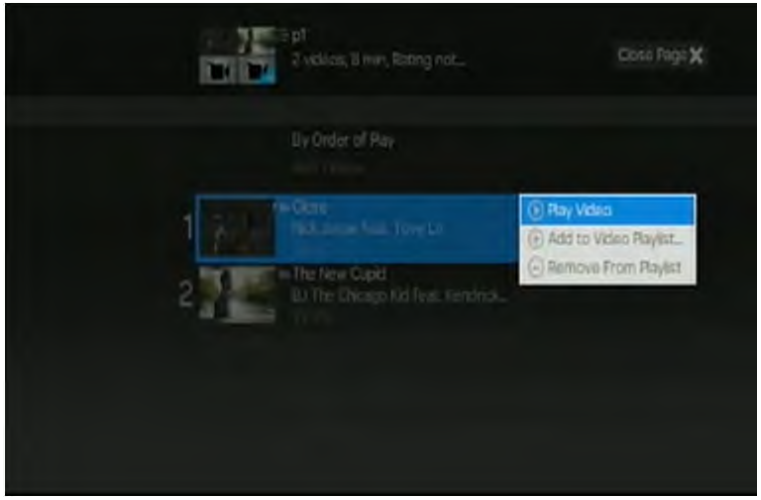
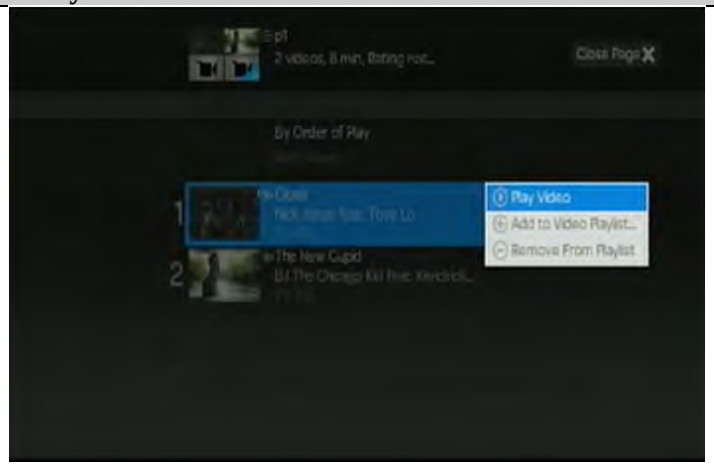
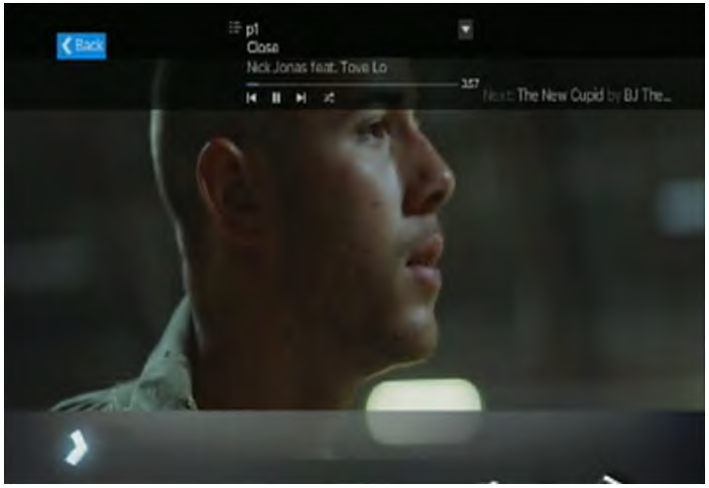
#	'045 Patent	Stingray Music System/Method
	identifying a media asset;	playlist entitled "p1" identifies a music video for a song entitled "Close" or "The New Cupid"). 
6g	in response to receiving from the client system information indicating that a user of the client system desires to view a media asset identified by a media asset identifier included in the playlist, transmitting to the client system the media asset desired by the user;	The computer system of the Stingray Music System, in response to receiving from the client system information indicating that a user of the client system desires to view a media asset (*e.g.*, the music video for the song entitled "Close") identified by a media asset identifier (*e.g.*, the song name identifying the music video for the song entitled "Close") included in the playlist (*e.g.*, the playlist entitled "p1"), transmits to the client system the media asset desired by the user (*e.g.*, the music video for the song entitled "Close").

Exhibit 4: Stingray's Infringement of the '045 Patent

#	'045 Patent	Stingray Music System/Method
		 
6h	transmitting to the client system a video identifier while transmitting to the client system the desired media asset, the video identifier identifying	The computer system of the Stingray Music System transmits to the client system a video identifier (*e.g.*, a thumbnail identifying a music video for the song entitled "Hello") while transmitting to the client system the desired media asset (*e.g.*, the music video for the song entitled "Close," which continues to play at the top center

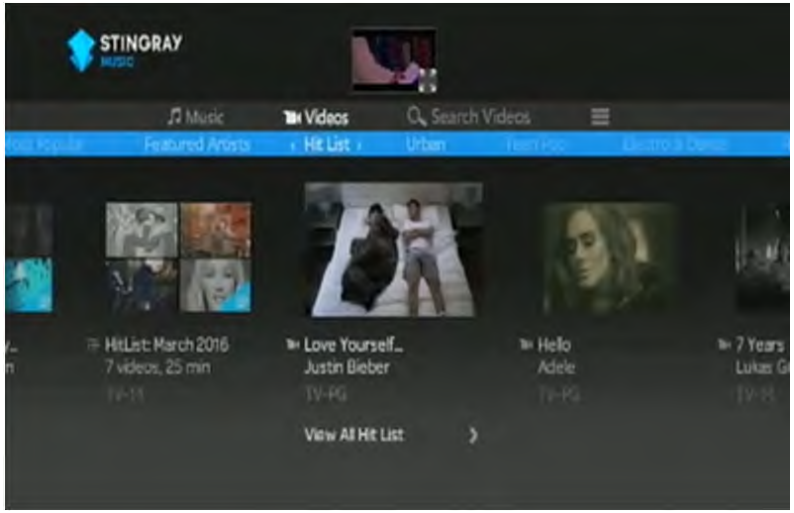
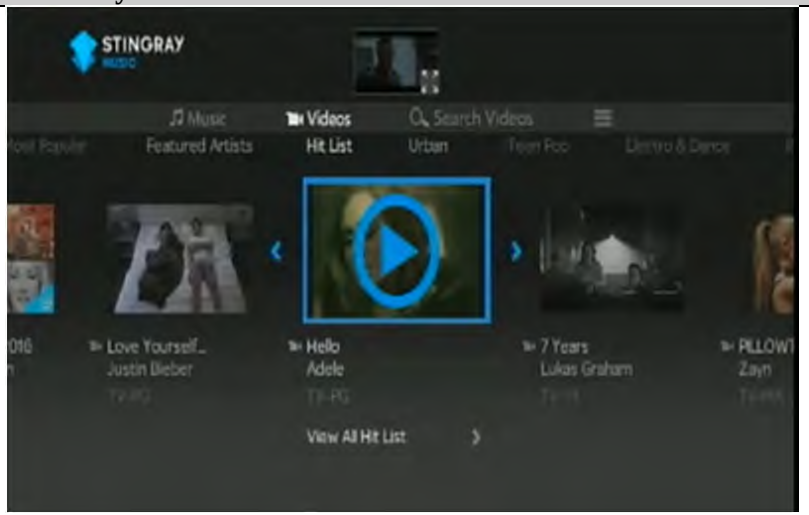
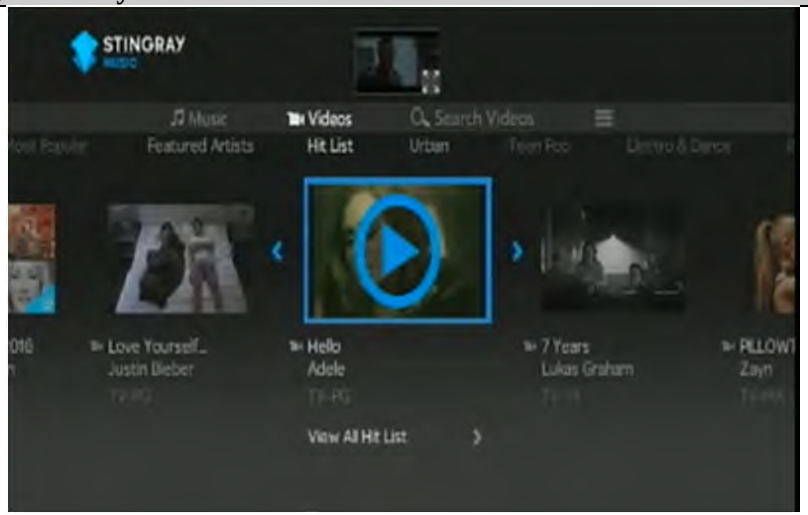
#	'045 Patent	Stingray Music System/Method
	a video;	of the Stingray Music app screen), the video identifier identifying a video (*e.g.*, the music video for the song entitled "Hello"). 
6i	while the client system is playing the desired media asset enabling the user of the client system to indicate that the user desires to view the video identified by the video identifier, and	The computer system of the Stingray Music System, while the client system is playing the desired media asset (*e.g.*, the music video for the song entitled "Close," which plays at the top center of the Stingray Music app screen), enables the user of the client system to indicate that the user desires to view the video identified by the video identifier (*e.g.*, the music video for the song entitled "Hello").

Exhibit 4: Stingray's Infringement of the '045 Patent

#	'045 Patent	Stingray Music System/Method
		
6j	then in response to receiving from the client system a message comprising information indicating that the user desires to view the video identified by the video identifier, ceasing transmitting to the client system the media asset and transmitting to the client system video data corresponding to the video identified by the video identifier.	The computer system of the Stingray Music System then, in response to receiving from the client system a message comprising information indicating that the user desires to view the video identified by the video identifier (*e.g.*, the music video for the song entitled "Hello"), ceases transmitting to the client system the media asset (*e.g.*, the music video for the song entitled "Close") and transmits to the client system video data corresponding to the video identified by the video identifier (*e.g.*, video data corresponding to the music video for the song entitled "Hello").

#	'045 Patent	Stingray Music System/Method
		
7a	The video-on-demand system of claim 6,	*See* claim 6, above.
7b	wherein the client system comprises a set-top-box and a television connected to the set-top-box.	In the Stingray Music System, the client system (*e.g.*, the end-user device running the Stingray Music TV app coupled to a television) comprises a set-top-box and a television connected to the set-top-box.

Exhibit 4: Stingray's Infringement of the '045 Patent

#	'045 Patent	Stingray Music System/Method
		
8a	The video-on-demand system of claim 6,	*See* claim 6, above.
8b	wherein each said media asset identifier identifies a music video.	In the Stingray Music System, each media asset identifier identifies a music video (*e.g.*, song names identifying music videos for songs entitled "Close" and "The New Cupid").
9a	The video-on-demand system of claim 6,	*See* claim 6, above.
9b	wherein the video is a music video.	In the Stingray Music System, the video is a music video (*e.g.*, the music video for the song "Close").
10a	10. The video-on-demand system of claim 6, wherein the method further comprises:	*See* claim 6, above.

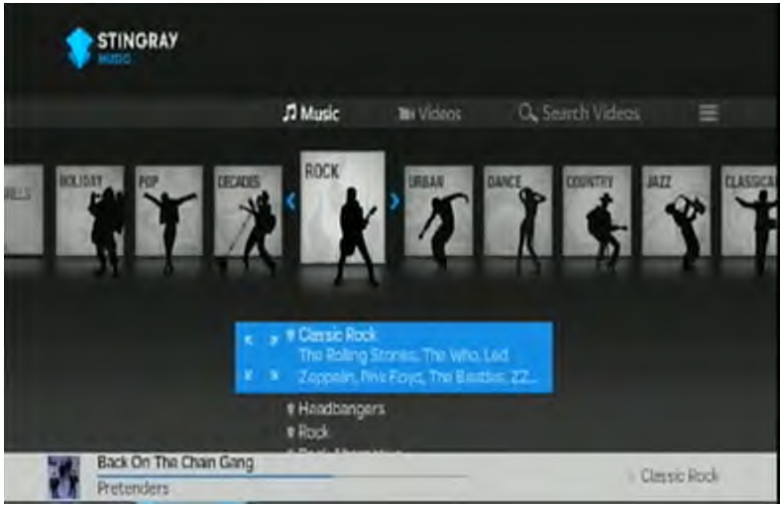
#	'045 Patent	Stingray Music System/Method
10b	selecting a song for one of a plurality of music channels, the one of the plurality of music channels being associated with a genre of music;	The Stingray Music System provides access to a plurality of streaming music channels. *See, e.g.*, "Stingray Music Brings All Good Vibes to AT&T U-verse Customers," Oct. 29, 2014, available at about.att.com/story/stingray_music_app_on_uverse_tv.html (last accessed Aug. 4, 2016) ("the new Stingray Music app, available at no additional charge, will have more than 100 streaming music channels") (MC-Stingray00119568); Stingray Website, "Continuous Music Service," available at http://music.stingray.com/en_US/about/baseService (last accessed Aug. 4, 2016) ("The Stingray Music continuous music network provides its listeners with a selection of close to fifty music channels, all commercial-free and uninterrupted, that cover a large variety of music genres, from rock to pop to jazz, to classical or international, delivered in pristine quality digital audio.") (MC-Stingray00119561). The Stingray Music system selects a song (*e.g.*, the song "Back on the Chain Gang" or "Workin' for MCA") for one of a plurality of music channels (*e.g.*, a "Classic Rock" channel). The one of the plurality of music channels (*e.g.*, the "Classic Rock" channel) is associated with a genre of music (*e.g.*, the classic rock genre). 

Exhibit 4: Stingray's Infringement of the '045 Patent

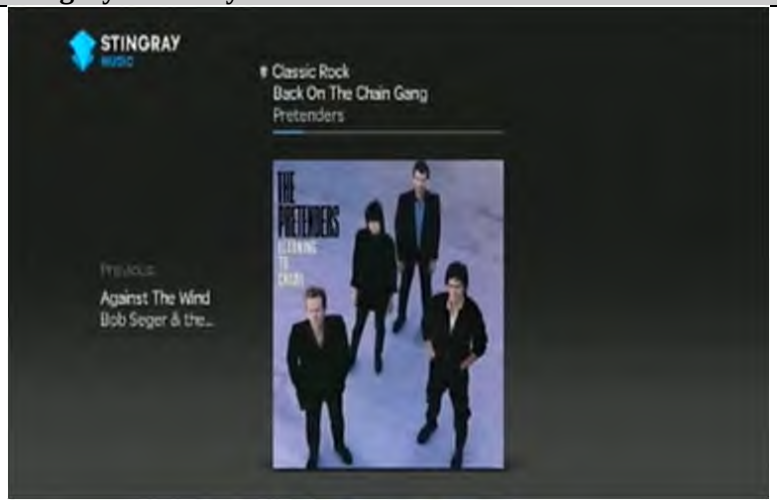
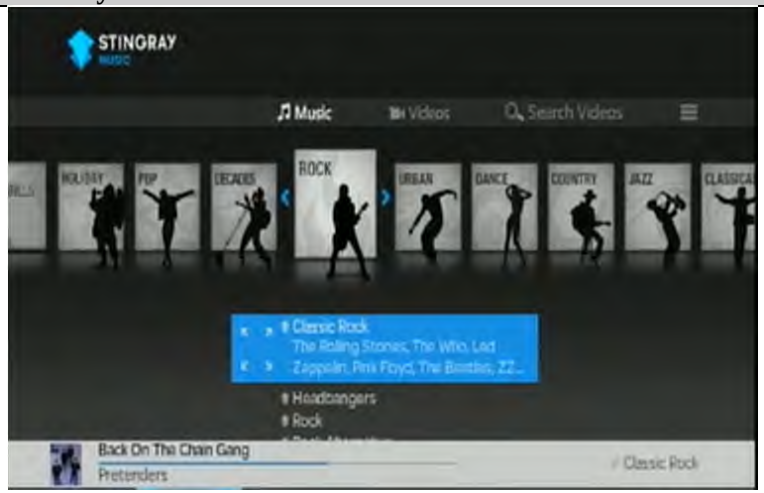
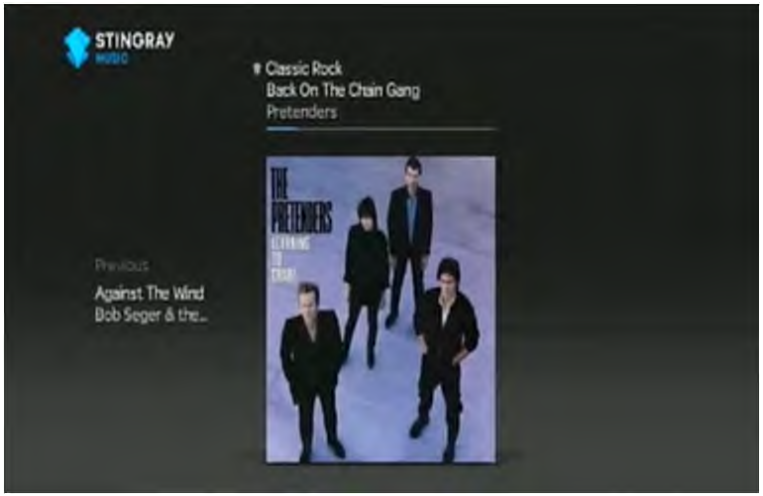
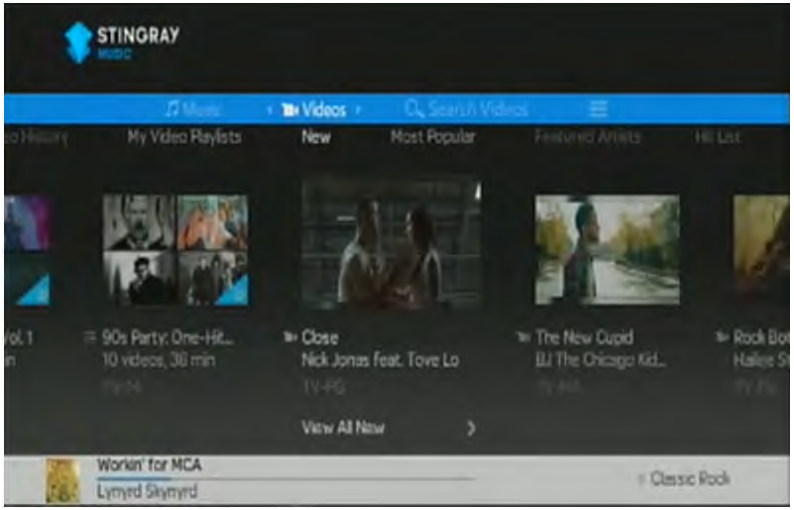
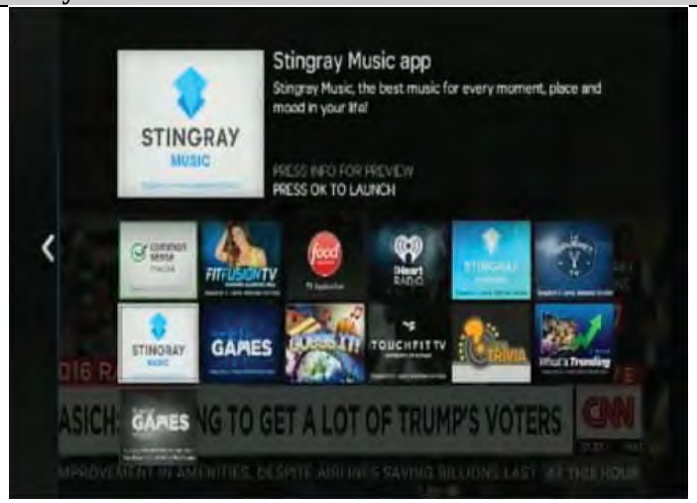
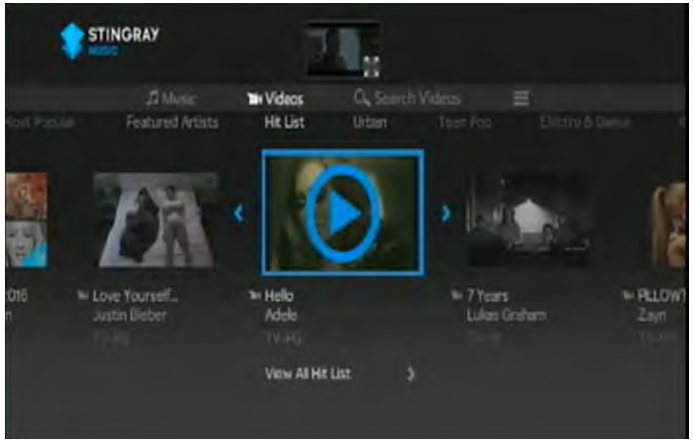
#	'045 Patent	Stingray Music System/Method
		
10c	transmitting simultaneously to a plurality of client systems audio data corresponding to the selected song, wherein each of the plurality of client systems is configured to use the audio data to play the song so that each user of each of the plurality of client systems can listen to the song, and the plurality of client systems comprises the first recited client system and a second client system;	The Stingray Music System transmits simultaneously to a plurality of client systems (*e.g.*, end-user devices running the Stingray Music app coupled to a television) audio data corresponding to the selected song (*e.g.*, the song "Back on the Chain Gang" or "Workin' for MCA"). *See, e.g.*, Stingray Website, "Support," available at http://music.stingray.com/en_US/about/support (last accessed Aug. 4, 2016) ("The Stingray Music website at Stingray Music.tv also has a listing of all songs played in the last 24 hours for each of the Stingray Music channels.") (MC-Stingray00119565). Each of the plurality of client systems is configured to use the audio data to play the song (*e.g.*, the song "Back on the Chain Gang" or "Workin' for MCA") so that each user of each of the plurality of client systems can listen to the song. *See id.* The plurality of client systems includes a first client system and a second client system (*e.g.*, first and second end-user devices running the Stingray Music app coupled to televisions).

Exhibit 4: Stingray's Infringement of the '045 Patent

#	'045 Patent	Stingray Music System/Method
		 
10d	while transmitting the audio data to the plurality of client systems, transmitting to the second client	The Stingray Music System, while transmitting the audio data (*e.g.*, the audio data for the song "Workin' for MCA") to the plurality of client systems, transmits to the second client system a second video identifier identifying a video (*e.g.*, a thumbnail

#	'045 Patent	Stingray Music System/Method
	system a second video identifier identifying a second video;	identifying a music video for the song "Close"). 
10e	while the second client system is playing the song enabling the user of the second client system to indicate that the user desires to view the second video identified by the second video identifier, and then in response to receiving from the second client system a message comprising information indicating that the user desires to view the second video identified by the second video identifier, transmitting to the second client system video data corresponding to the second video identified by the second video	The Stingray Music System, while the second client system is playing the song (*e.g.*, the song "Workin' for MCA"), enables the user of the second client system to indicate that the user desires to view the second video identified by the second video identifier (*e.g.*, the music video for the song "Close"). The Stingray Music System then receives from the second client system a message comprising information indicating that the user desires to view the second video identified by the second video identifier (*e.g.*, the music video for the song "Close"). The Stingray Music System transmits to the second client system (*e.g.*, the second device running the Stingray Music app) video data corresponding to the second video identified by the second video identifier (*e.g.*, video data corresponding to the music video for the song "Close").

#	'045 Patent	Stingray Music System/Method
	identifier.	
11a	11. A video-on-demand method, comprising:	The Stingray Music Method, which uses the Stingray Music TV app on AT&T's U-verse® platform, is a video-on-demand method. *See*, *e.g.*, Stingray Music Website "Music Videos on Demand Service," available at http://music.stingray.com/en_US/about/MVOD (last accessed Aug. 6, 2016) ("[t]he Stingray Music service offering now includes Music Videos on Demand") (MC-Stingray00119564).

#	'045 Patent	Stingray Music System/Method
		 
11b	selecting a song for one of a plurality of music channels, the one of the plurality of music channels being associated with a genre of	The Stingray Music Method provides access to a plurality of streaming music channels. *See, e.g.*, "Stingray Music Brings All Good Vibes to AT&T U-verse Customers," Oct. 29, 2014, available at about.att.com/story/stingray_music_app_on_uverse_tv.html (last accessed Aug. 4,

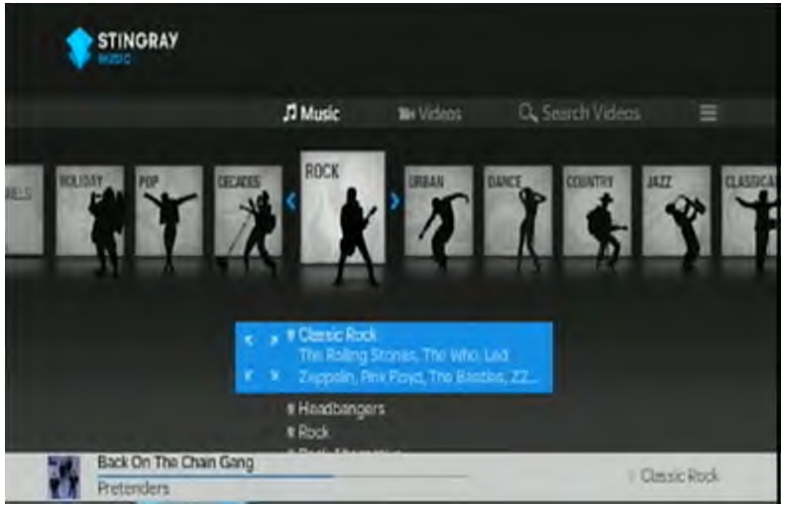
#	'045 Patent	Stingray Music System/Method
	music;	2016) ("the new Stingray Music app, available at no additional charge, will have more than 100 streaming music channels") (MC-Stingray00119568); Stingray Website, "Continuous Music Service," available at http://music.stingray.com/en_US/about/baseService (last accessed Aug. 4, 2016) ("The Stingray Music continuous music network provides its listeners with a selection of close to fifty music channels, all commercial-free and uninterrupted, that cover a large variety of music genres, from rock to pop to jazz, to classical or international, delivered in pristine quality digital audio.") (MC-Stingray00119561). The Stingray Music Method selects a song (*e.g.*, the song "Back on the Chain Gang" or "Workin' for MCA") for one of a plurality of music channels (*e.g.*, a "Classic Rock" channel). The one of the plurality of music channels (*e.g.*, the "Classic Rock" channel) is associated with a genre of music (*e.g.*, the classic rock genre). 

Exhibit 4: Stingray's Infringement of the '045 Patent

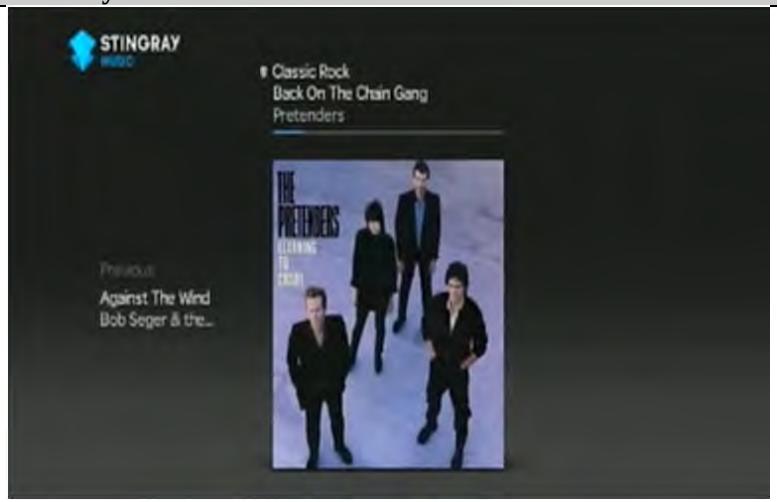
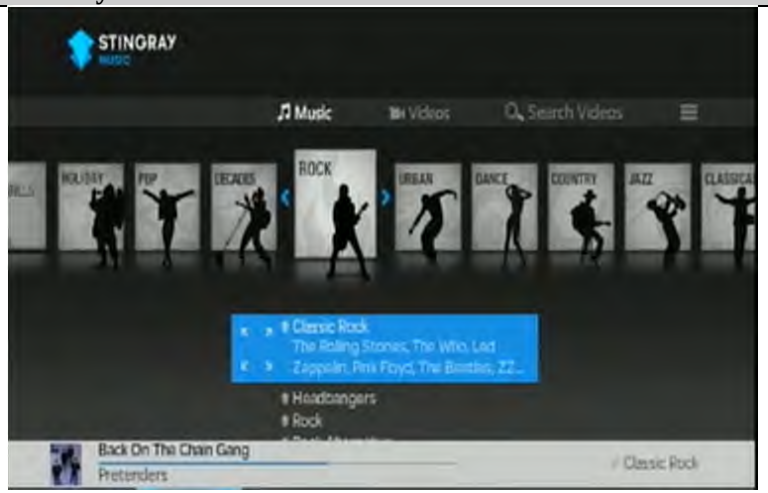
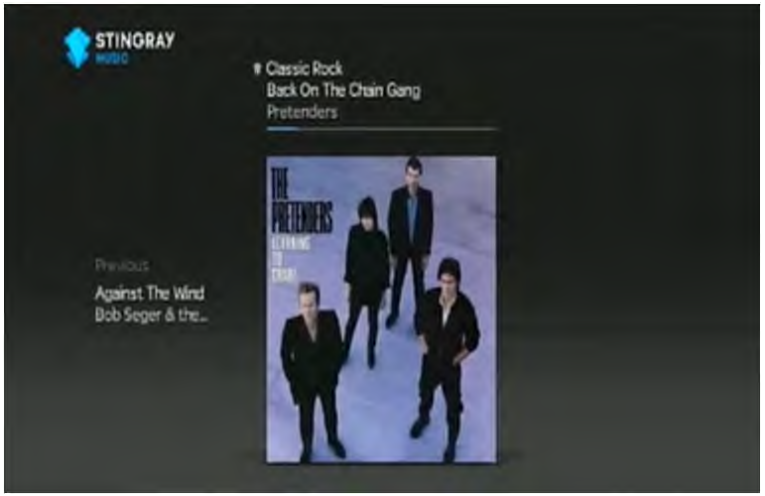
#	'045 Patent	Stingray Music System/Method
		
11c	transmitting simultaneously to a plurality of client systems audio data corresponding to the selected song, wherein each of the plurality of client systems is configured to use the audio data to play the song so that each user of each of the plurality of client systems can listen to the song, and the plurality of client systems includes a first client system and a second client system;	The Stingray Music Method transmits simultaneously to a plurality of client systems (*e.g.*, end-user devices running the Stingray Music app coupled to a television) audio data corresponding to the selected song (*e.g.*, the song "Back on the Chain Gang" or "Workin' for MCA"). *See, e.g.*, Stingray Website, "Support," available at http://music.stingray.com/en_US/about/support (last accessed Aug. 4, 2016) ("The Stingray Music website at Stingray Music.tv also has a listing of all songs played in the last 24 hours for each of the Stingray Music channels.") (MC-Stingray00119565). Each of the plurality of client systems is configured to use the audio data to play the song (*e.g.*, the song "Back on the Chain Gang" or "Workin' for MCA") so that each user of each of the plurality of client systems can listen to the song. *See id.* The plurality of client systems includes a first client system and a second client system (*e.g.*, first and second end-user devices running the Stingray Music app coupled to televisions).

Exhibit 4: Stingray's Infringement of the '045 Patent

#	'045 Patent	Stingray Music System/Method
		 
11d	while transmitting the audio data to the plurality of client systems, transmitting to the first client system	The Stingray Music Method, while transmitting the audio data (*e.g.*, the audio data for the song "Workin' for MCA") to the plurality of client systems, transmits to the first client system a video identifier identifying a video (*e.g.*, a thumbnail identifying

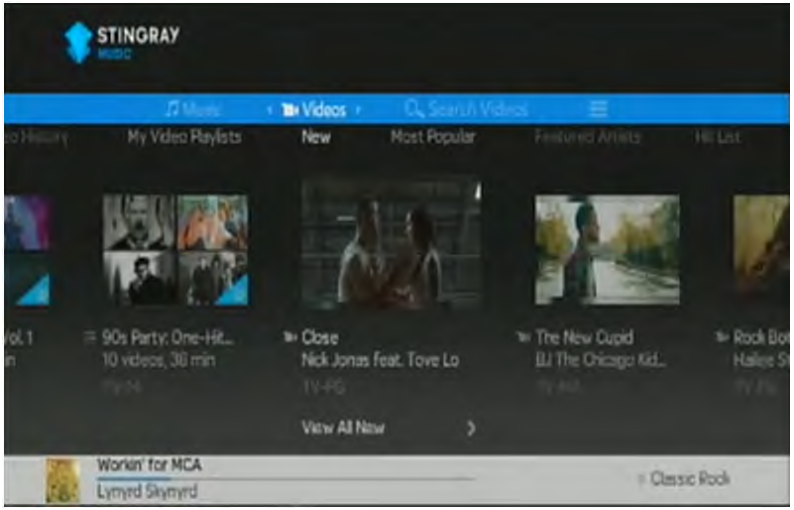
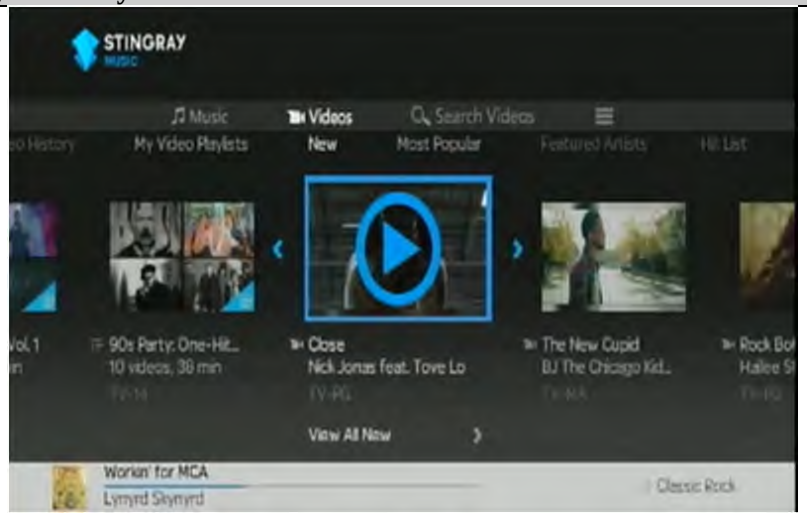
#	'045 Patent	Stingray Music System/Method
	a video identifier identifying a video;	a music video for the song "Close"). 
11e	while the first client system is playing the song enabling the user of the first client system to indicate that the user desires to view the video identified by, the video identifier and then receiving from the first client system a message comprising information indicating that the user desires to view the video identified by the video identifier, wherein the message is received while at least a portion of the audio data is being transmitted to the first client system; and	The Stingray Music Method, while the first client system is playing the song (*e.g.*, the song "Workin' for MCA"), enables the user of the first client system to indicate that the user desires to view the video identified by the video identifier (*e.g.*, the music video for the song "Close"). The Stingray Music Method then receives from the first client system a message comprising information indicating that the user desires to view the video identified by the video identifier (*e.g.*, the music video for the song "Close"). The message is received while at least a portion of the audio data (*e.g.*, the audio data for the song "Workin' for MCA") is being transmitted to the first client system.

Exhibit 4: Stingray's Infringement of the '045 Patent

#	'045 Patent	Stingray Music System/Method
		
11f	in response to receiving the message from the first client system, transmitting to the first client system video data corresponding to the video identified by the video identifier.	The Stingray Music Method, in response to receiving the message from the first client system, transmits to the first client system video data corresponding to the video identified by the video identifier (*e.g.*, video data corresponding to the music video for the song "Close").

#	'045 Patent	Stingray Music System/Method
		
12a	The video-on-demand method of claim 11,	*See* claim 11, above.
12b	wherein the first client system comprises a set-top-box and a television connected to the set-top-box.	In the Stingray Music Method, the client system (*e.g.*, an end-user device running the Stingray Music app coupled to a television) comprises a set-top-box and a television connected to the set-top-box.

Exhibit 4: Stingray's Infringement of the '045 Patent

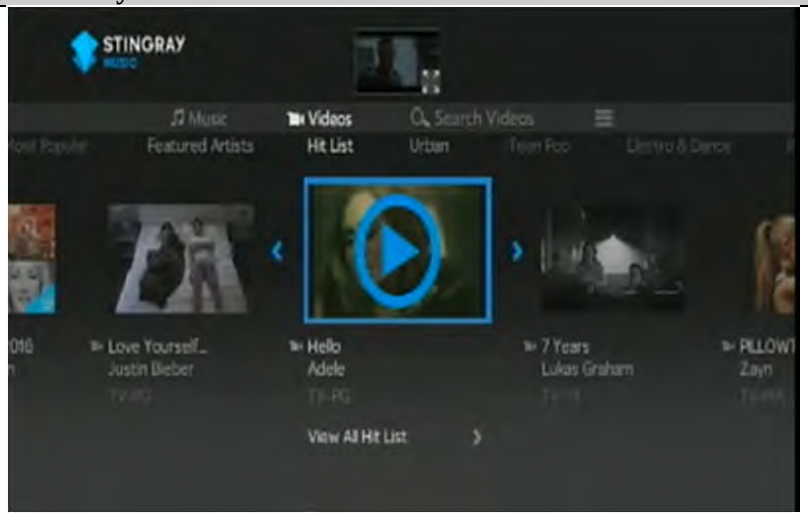
#	'045 Patent	Stingray Music System/Method
		
13a	The video-on-demand method of claim 11,	*See* claim 11, above.
13b	wherein the video is a music video.	In the Stingray Music Method, the video is a music video (*e.g.*, the music video for the song "Close").
14a	The video-on-demand method of claim 11, further comprising	*See* claim 11, above.
14b	creating a playlist, wherein the playlist comprises a set of media asset identifiers selected by a user of the second client system, each media asset identifier included in the set of media asset identifiers identifying a media asset.	The Stingray Music Method creates a playlist (*e.g.*, a playlist entitled "p1"). The playlist comprises a set of media asset identifiers (*e.g.*, song names identifying music videos for songs entitled "Close" and "The New Cupid") selected by a user of the second client system, each media asset identifier included in the set of media asset identifiers identifying a media asset (*e.g.*, song names identifying music videos for songs entitled "Close" and "The New Cupid").

Exhibit 4: Stingray's Infringement of the '045 Patent

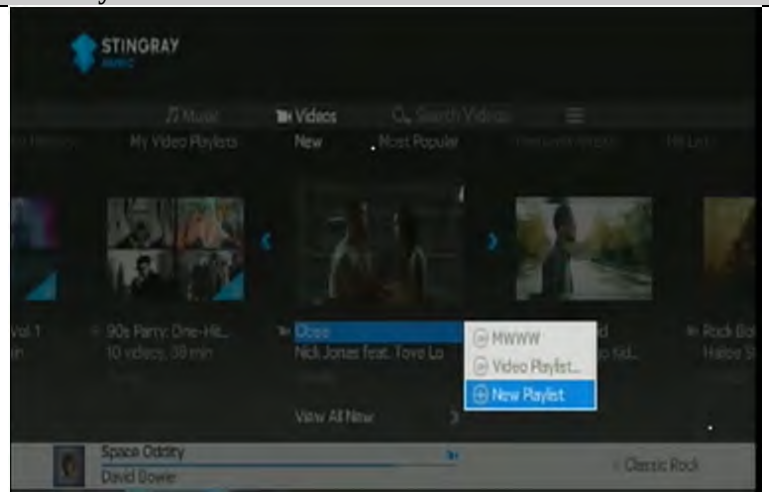
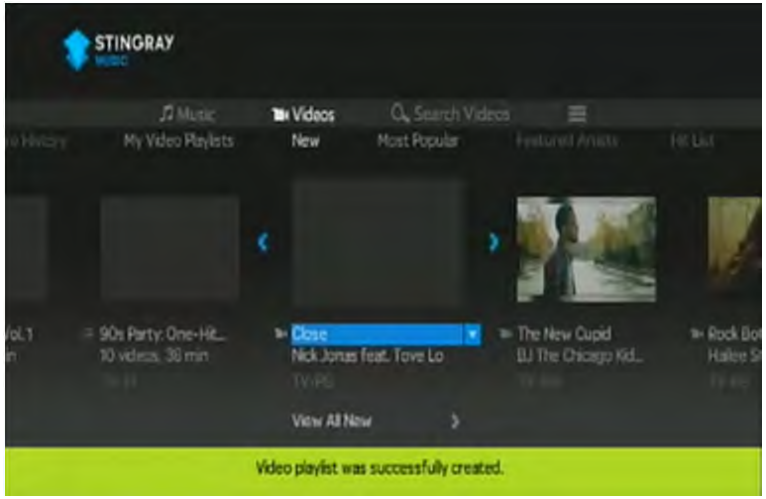
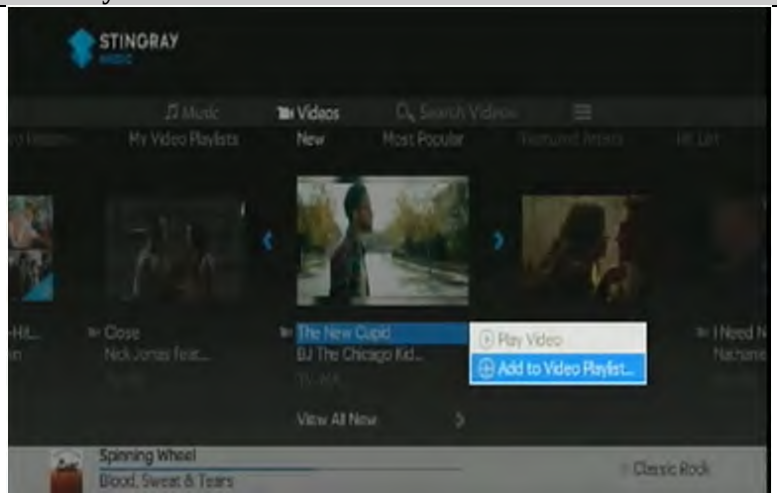
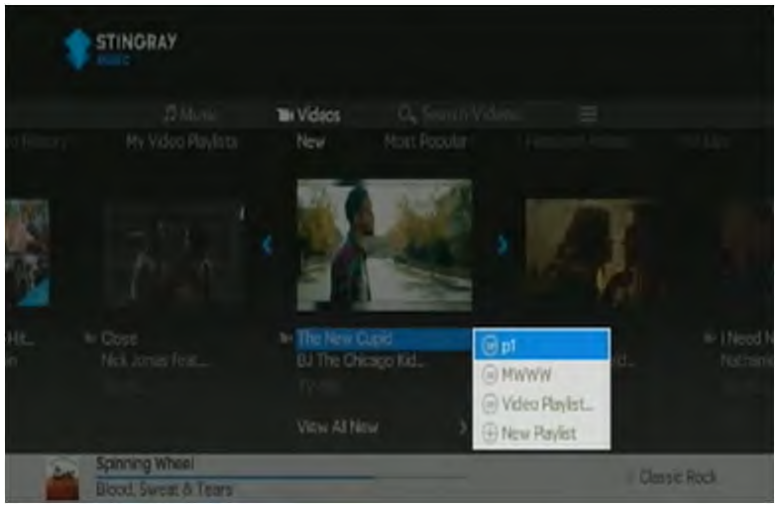
#	'045 Patent	Stingray Music System/Method
		 

Exhibit 4: Stingray's Infringement of the '045 Patent

#	'045 Patent	Stingray Music System/Method
		 

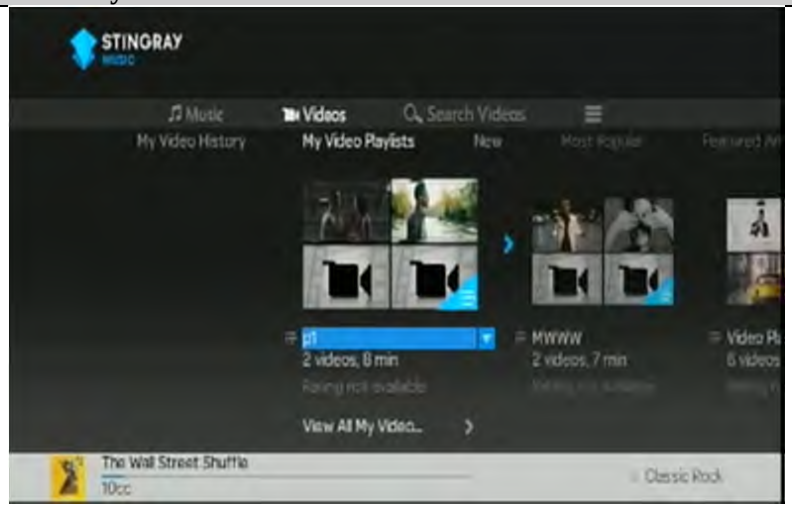
#	'045 Patent	Stingray Music System/Method
		
15a	The video-on-demand method of claim 14, further comprising:	*See* claim 14, above.
15b	receiving information transmitted by the second client system, the information indicating that the user of the second client system desires to view a media asset identified by a media asset identifier included in the playlist;	The Stingray Music Method receives information transmitted by the second client system, the information indicating that the user of the second client system desires to view a media asset identified by a media asset identifier included in the playlist (*e.g.*, the music video for the song entitled "Hello").

Exhibit 4: Stingray's Infringement of the '045 Patent

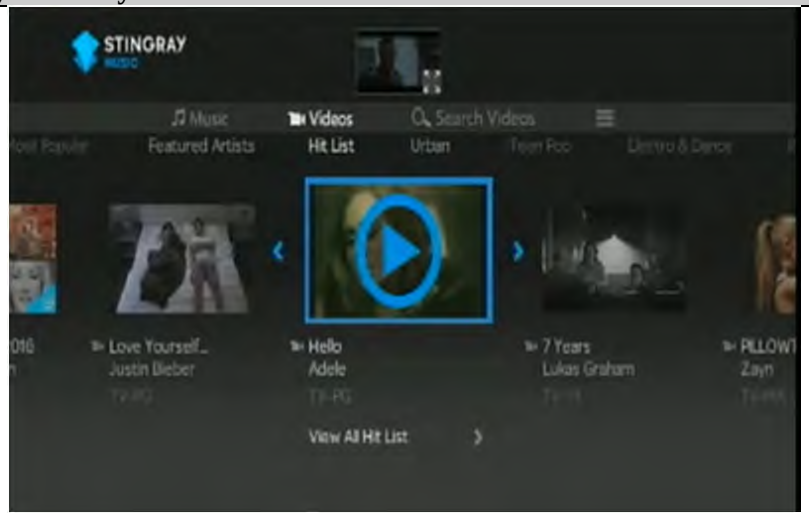
#	'045 Patent	Stingray Music System/Method
		
15c	in response to receiving the information, transmitting to the second client system the media asset desired by the user.	The Stingray Music Method, in response to receiving the message from the client system, transmits to the client system video data corresponding to the video identified by the video identifier (*e.g.*, video data corresponding to the music video for the song entitled "Hello").

Exhibit 4: Stingray's Infringement of the '045 Patent

#	'045 Patent	Stingray Music System/Method
		
16a	16. A video-on-demand system, the video on demand system comprising:	The Stingray Music System, which includes the Stingray Music TV app on AT&T's U-verse® platform, is a video-on-demand system. *See, e.g.*, Stingray Music Website "Music Videos on Demand Service," available at http://music.stingray.com/en_US/about/MVOD (last accessed Aug. 6, 2016) ("[t]he Stingray Music service offering now includes Music Videos on Demand") (MC-Stingray00119564).

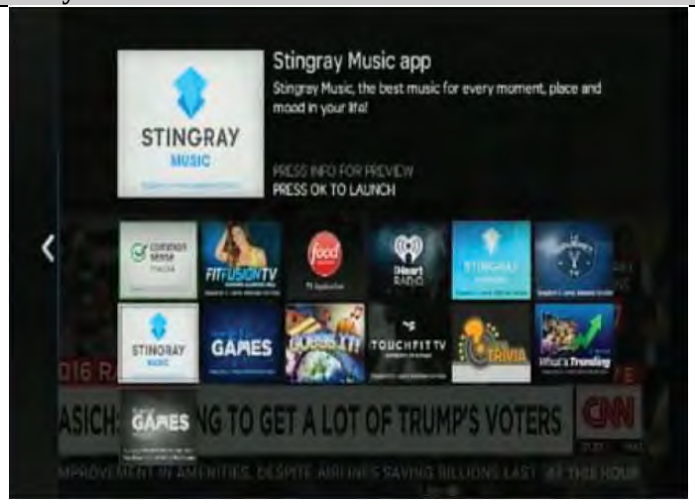
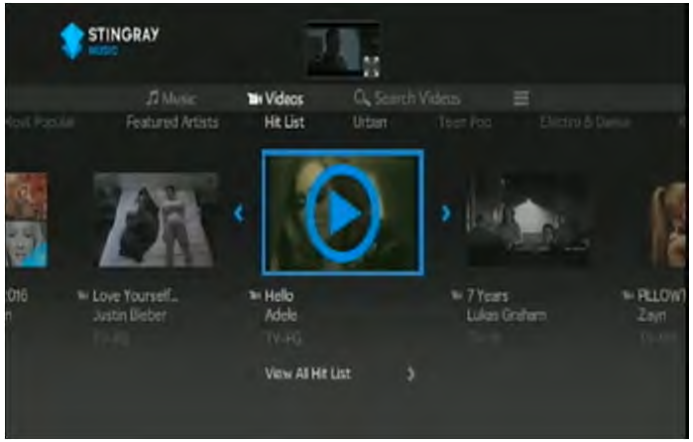
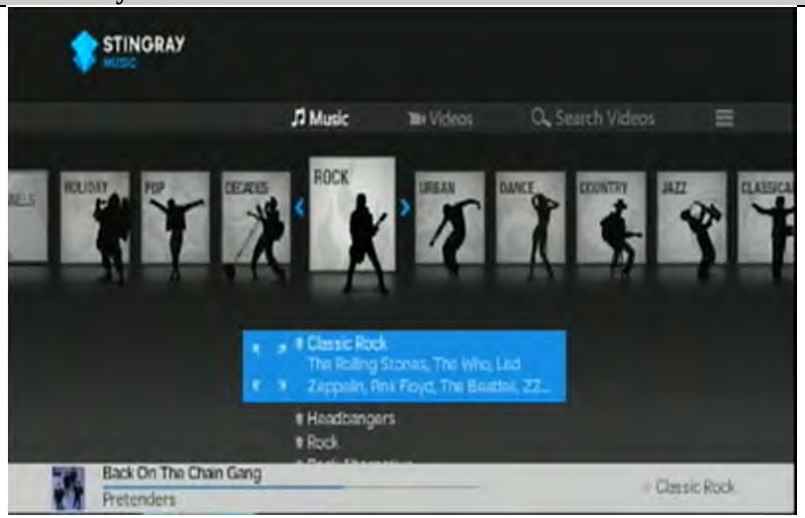
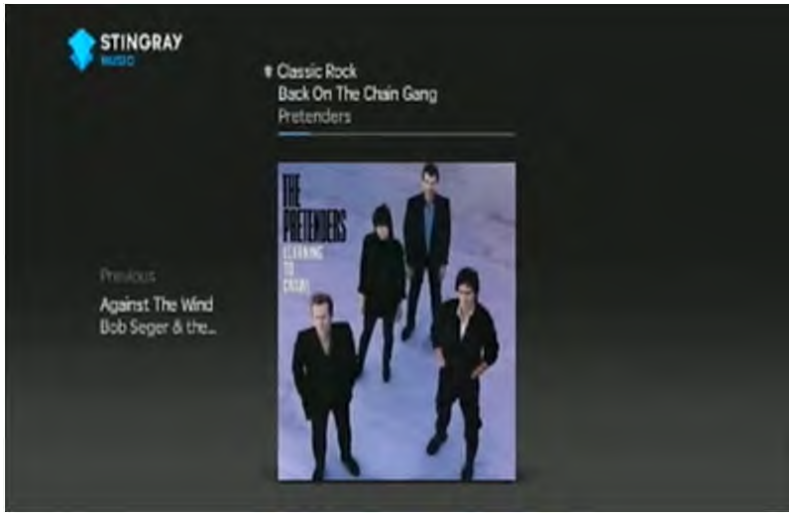
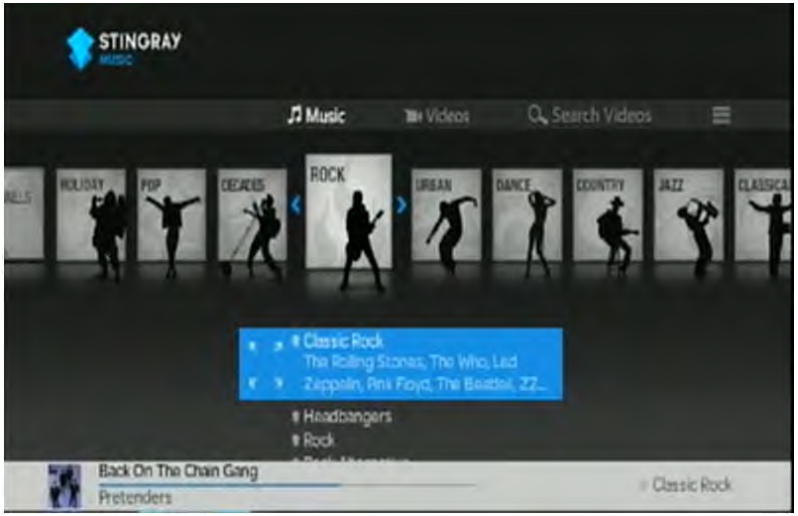
#	'045 Patent	Stingray Music System/Method
		 
16b	a transmitter;	The Stingray Music System comprises a transmitter.
16c	a receiver; and	The Stingray Music System comprises a receiver.

Exhibit 4: Stingray's Infringement of the '045 Patent

#	'045 Patent	Stingray Music System/Method
16d	a computer system coupled to the transmitter and the receiver, wherein the computer system is configured to perform a method comprising:	The Stingray Music System comprises a computer system coupled to the transmitter and the receiver, and the computer system is configured to perform a method.
16e	selecting a song for one of a plurality of music channels, the one of the plurality of music channels being associated with a genre of music;	The computer system of the Stingray Music System selects a song (*e.g.*, the song "Back on the Chain Gang" or "Workin' for MCA") for one of a plurality of music channels (*e.g.*, the "Classic Rock" channel). *See, e.g.*, "Stingray Music Brings All Good Vibes to AT&T U-verse Customers," Oct. 29, 2014, available at about.att.com/story/stingray_music_app_on_uverse_tv.html (last accessed Aug. 4, 2016) ("the new Stingray Music app, available at no additional charge, will have more than 100 streaming music channels") (MC-Stingray00119568); Stingray Website, "Continuous Music Service," available at http://music.stingray.com/en_US/about/baseService (last accessed Aug. 4, 2016) ("The Stingray Music continuous music network provides its listeners with a selection of close to fifty music channels, all commercial-free and uninterrupted, that cover a large variety of music genres, from rock to pop to jazz, to classical or international, delivered in pristine quality digital audio.") (MC-Stingray00119561). The one of the plurality of music channels (*e.g.*, the "Classic Rock" channel) is associated with a genre of music (*e.g.*, the classic rock genre).

Exhibit 4: Stingray's Infringement of the '045 Patent

#	'045 Patent	Stingray Music System/Method
		 
16f	transmitting simultaneously to a	The computer system of the Stingray Music System transmits simultaneously to a

#	'045 Patent	Stingray Music System/Method
	plurality of client systems audio data corresponding to the selected song, wherein each of the plurality of client systems is configured to use the audio data to play the song so that each user of each of the plurality of client systems can listen to the song, and the plurality of client systems includes a first client system and a second client system;	plurality of client systems (*e.g.*, end-user devices running the Stingray Music app coupled to a television) audio data corresponding to the selected song (*e.g.*, the song "Back on the Chain Gang" or "Workin' for MCA"). *See, e.g.*, Stingray Website, "Support," available at http://music.stingray.com/en_US/about/support (last accessed Aug. 4, 2016) ("The Stingray Music website at Stingray Music.tv also has a listing of all songs played in the last 24 hours for each of the Stingray Music channels.") (MC-Stingray00119565). Each of the plurality of client systems is configured to use the audio data to play the song (*e.g.*, the song "Back on the Chain Gang" or "Workin' for MCA") so that each user of each of the plurality of client systems can listen to the song. *See id.* The plurality of client systems includes a first client system and a second client system (*e.g.*, first and second end-user devices running the Stingray Music app and coupled to a television). 

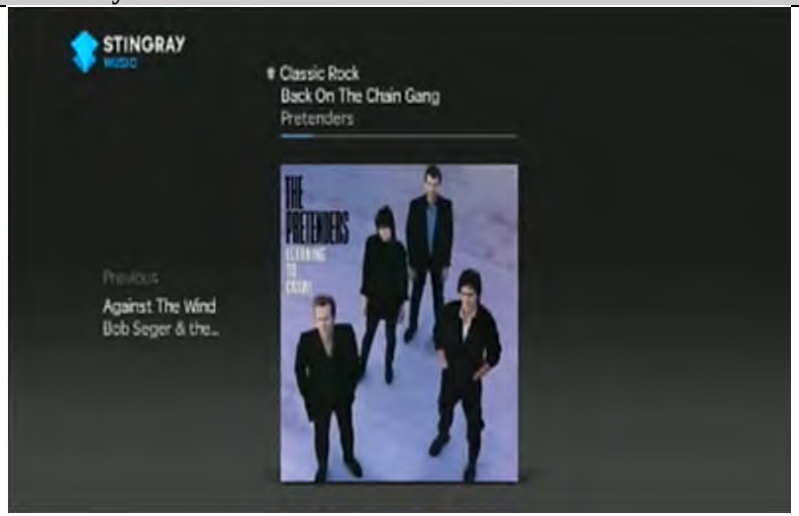
#	'045 Patent	Stingray Music System/Method
		
16g	while transmitting the audio data to the plurality of client systems, transmitting to the first client system a video identifier identifying a video;	The computer system of the Stingray Music System, while transmitting the audio data (*e.g.*, the audio data for the song "Workin' for MCA") to the plurality of client systems, transmits to the first client system (*e.g.*, the first device running the Stingray Music app) a video identifier identifying a video (*e.g.*, a thumbnail identifying a music video for the song "Close").

Exhibit 4: Stingray's Infringement of the '045 Patent

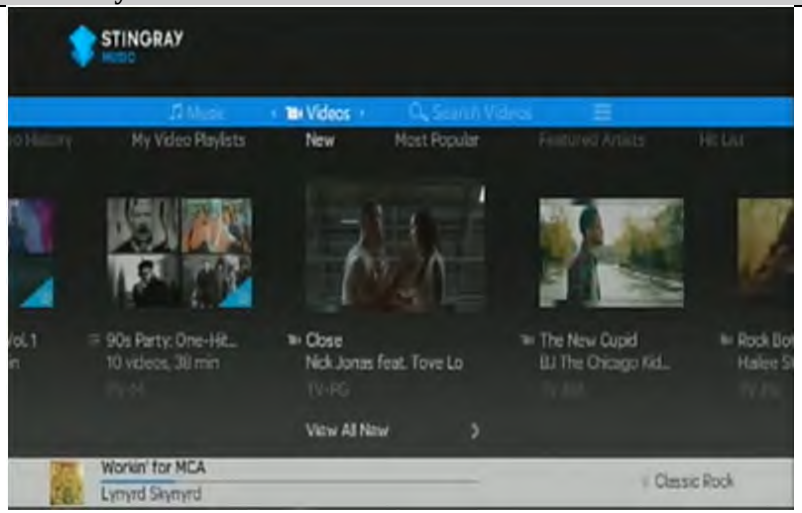
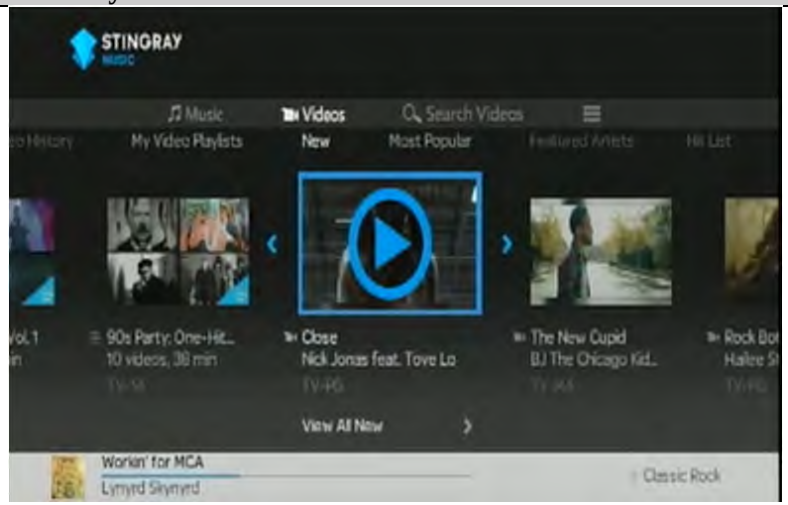
#	'045 Patent	Stingray Music System/Method
		
16h	while the first client system is playing the song enabling the user of the first client system to indicate that the user desires to view the video identified by the video identifier, and then in response to receiving from the first client system a message comprising information indicating that the user desires to view the video identified by the video identifier, transmitting to the first client system video data corresponding to the video identified by the video identifier.	The computer system of the Stingray Music System, while the first client system is playing the song (*e.g.*, the song "Workin' for MCA") enables the user of the first client system to indicate that the user desires to view the video identified by the video identifier (*e.g.*, the music video for the song "Close"). The computer system of the Stingray Music System then, in response to receiving from the first client system a message comprising information indicating that the user desires to view the video identified by the video identifier (*e.g.*, the music video for the song "Close"), transmits to the first client system video data corresponding to the video identified by the video identifier (*e.g.*, video data corresponding to the music video for the song "Close").

Exhibit 4: Stingray's Infringement of the '045 Patent

#	'045 Patent	Stingray Music System/Method
		 
17a	17. The video-on-demand system of claim 16	*See* claim 16, above.

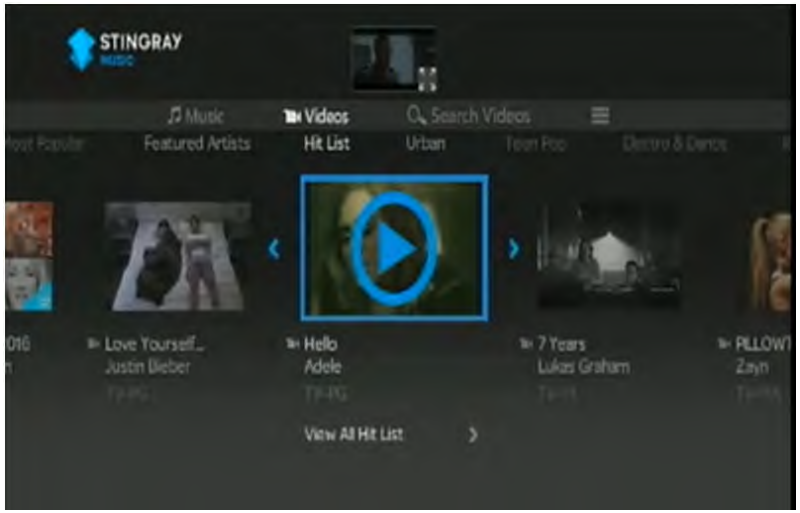
#	'045 Patent	Stingray Music System/Method
17b	wherein the first client system comprises a set-top-box and a television connected to the set-top-box.	In the Stingray Music System, the client system (*e.g.*, the end-user device running the Stingray Music app coupled to a television) comprises a set-top-box and a television connected to the set-top-box. 
18a	18. The video-on-demand system of claim 16,	*See* claim 16, above.
18b	wherein the video is a music video.	In the Stingray Music System, the video is a music video (*e.g.*, the music video for the song "Close").
19a	19. The video-on-demand system of claim 16,	*See* claim 16, above.
19b	wherein the method further comprises creating a playlist, wherein the playlist comprises a set of media asset identifiers selected by a user of the second client system,	The Stingray Music System creates a playlist (*e.g.*, a playlist entitled "p1"). The playlist comprises a set of media asset identifiers (*e.g.*, song names identifying music videos for songs entitled "Close" and "The New Cupid") selected by a user of the second client system, each media asset identifier included in the set of media asset identifiers identifying a media asset (*e.g.*, song names identifying music videos

Exhibit 4: Stingray's Infringement of the '045 Patent

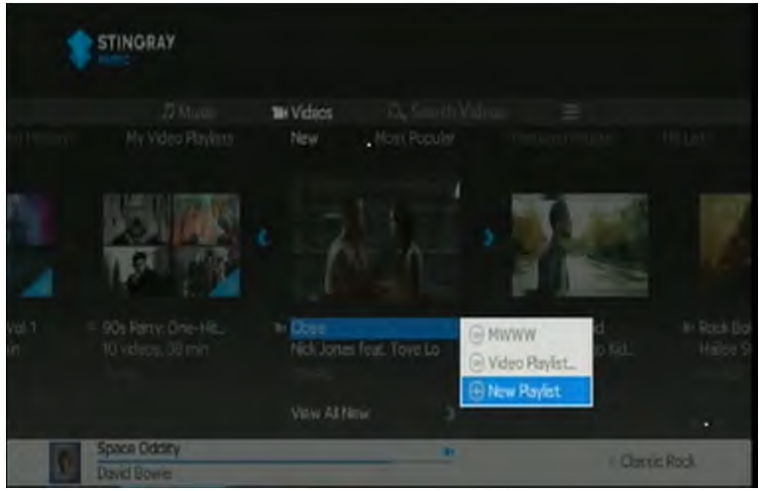
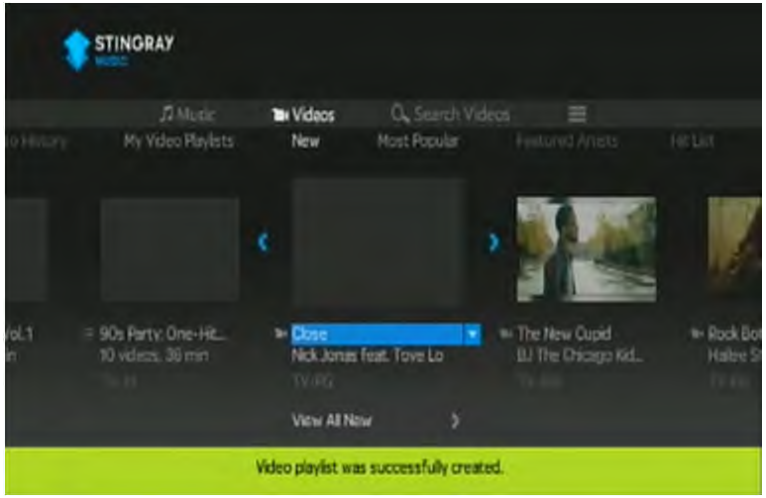
#	'045 Patent	Stingray Music System/Method
	each media asset identifier included in the set of media asset identifiers identifying a media asset.	for songs entitled "Close" and "The New Cupid").  

Exhibit 4: Stingray's Infringement of the '045 Patent

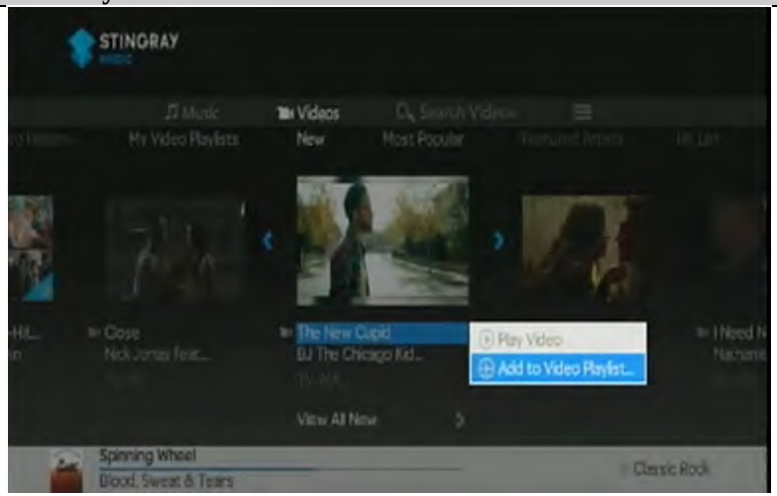
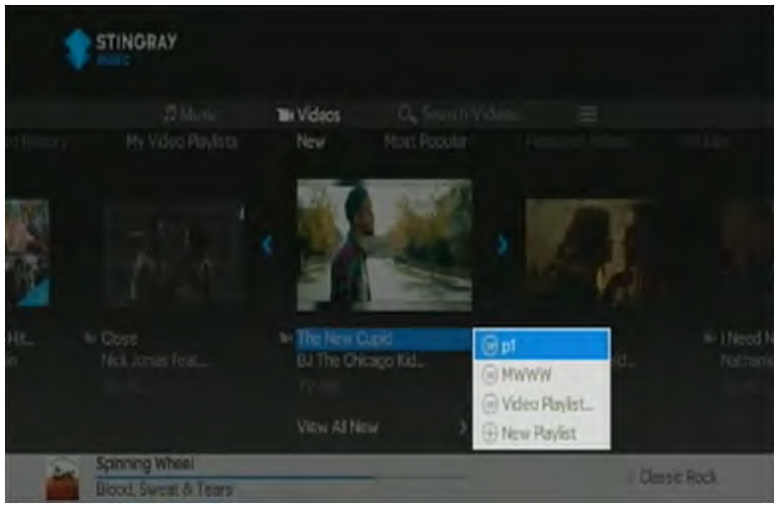
#	'045 Patent	Stingray Music System/Method
		 

Exhibit 4: Stingray's Infringement of the '045 Patent

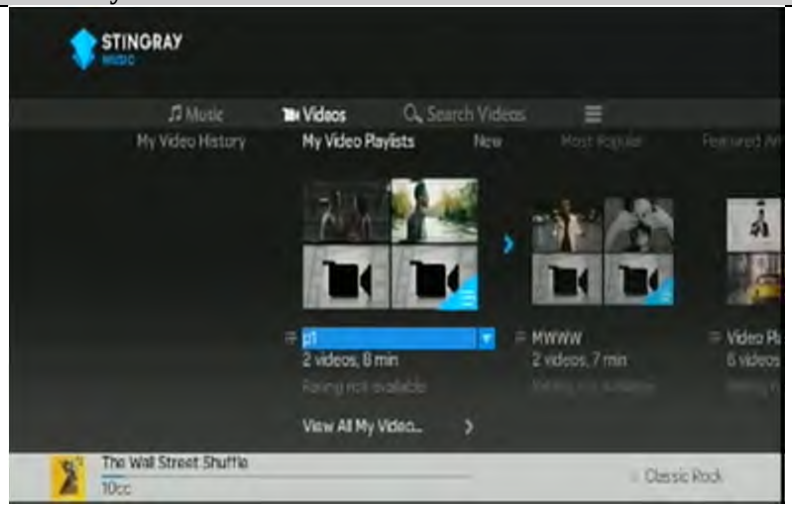
#	'045 Patent	Stingray Music System/Method
		
20a	20. The video-on-demand system of claim 19,	*See* claim 19, above.
20b	wherein the method further comprises, in response to receiving from the second client system information indicating that a user of the second client system desires to view a media asset identified by a media asset identifier included in the playlist, transmitting to the second client system the media asset desired by the user.	In response to receiving from the second client system information indicating that a user of the second client system desires to view a media asset identified by a media asset identifier included in the playlist (*e.g.*, an indication to view the music video for the song entitled "Close"), the Stingray Music System transmits to the second client system the media asset desired by the user (*e.g.*, the music video for the song entitled "Close").

Exhibit 4: Stingray's Infringement of the '045 Patent

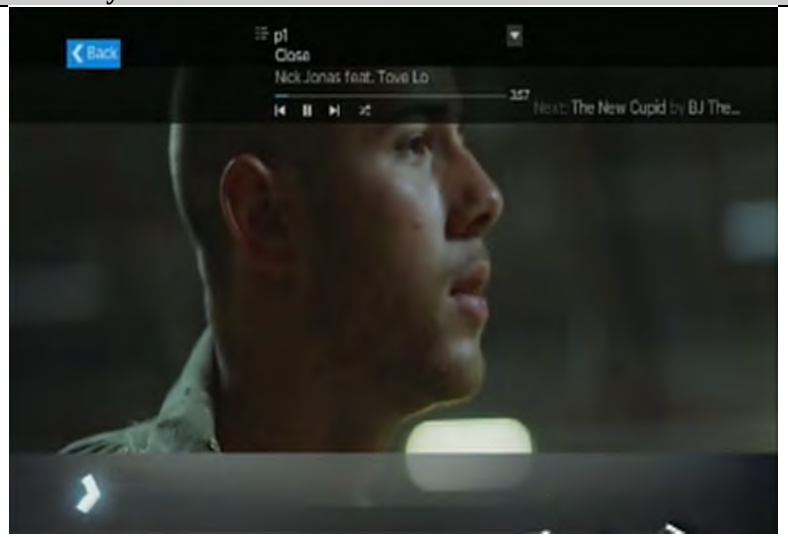
#	'045 Patent	Stingray Music System/Method
		

EXHIBIT 5

Stingray's Infringement of the '121 Patent

UNITED STATES PATENT NO. 9,414,121 ("the '121 Patent")

This portion of Plaintiff's infringement contentions refers to the Stingray Music TV app that is offered on the AT&T's U-verse® platform as exemplary. These contentions apply to all similar Stingray Music products and services as offered on other platforms[1] (collectively the "Stingray Music System/Method").

#	'121 Patent	Stingray Music System/Method
1a	A system for providing an on-demand, personalized media service and a broadcast service to a set-top-box, comprising:	The Stingray Music System, which includes the Stingray Music TV app on AT&T's U-verse® platform, is a system for providing an on-demand, personalized media service and a broadcast service to a set-top-box. *See, e.g.*, Stingray Music Website "Music Videos on Demand Service," available at http://music.stingray.com/en_US/about/MVOD (last accessed August 5, 2016) ("[t]he Stingray Music service offering now includes Music Videos on Demand") (MC-Stingray00119564); Stingray Music Website "Distribute Stingray Music," available at http://music.stingray.com/en_US/about/distribute (last accessed August 4, 2016) ("All of the Stingray Music services are delivered using Stingray's proprietary UbiquiCAST broadcast infrastructure. This advanced, next-generation server technology allows for customization of services for specific customers.") (MC-Stingray00119562).

[1] These platforms include, for example, cable operator, satellite, Internet Protocol television (IPTV), mobile, and/or website platforms.

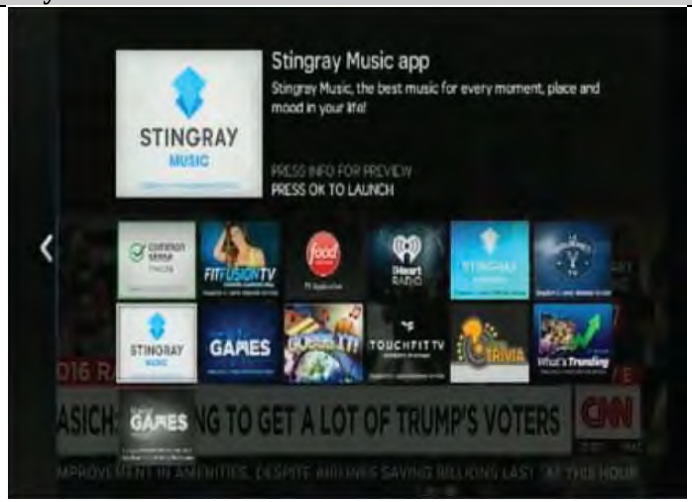
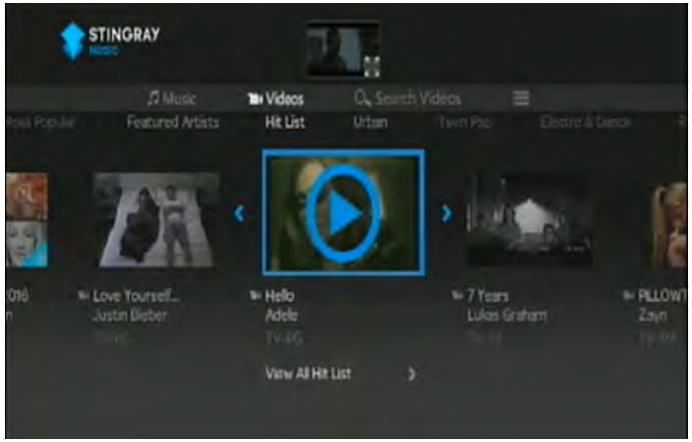
#	'121 Patent	Stingray Music System/Method
		 
1b	a distribution network, wherein the set-top-box is connected to the distribution network; and	The Stingray Music System includes/uses a distribution network (*e.g.*, AT&T's U-verse® distribution network). The set-top-box is connected to the distribution network.

Exhibit 5: Stingray's Infringement of the '121 Patent

#	'121 Patent	Stingray Music System/Method
1c	a distribution system including a transmission system operable to transmit via the distribution network a media channel comprising a stream of audio and video data, wherein	The Stingray Music System transmits a plurality of media channels. *See, e.g.*, AT&T Newsroom "Stingray Music Brings All Good Vibes to AT&T U-verse Customers" (Oct. 29, 2014), available at about.att.com/story/stingray_music_app_on_uverse_tv.html (last accessed August 4, 2016) ("the new Stingray Music app, available at no additional charge, will have more than 100 streaming music channels") (MC-Stingray00119568); Stingray Music website "Continuous music service," available at http://music.stingray.com/en_US/about/baseService (last accessed August 4, 2016) ("The Stingray Music continuous music network provides its listeners with a selection of close to fifty music channels, all commercial-free and uninterrupted, that cover a large variety of music genres, from rock to pop to jazz, to classical or international, delivered in pristine quality digital audio.") (MC-Stingray00119561). The Stingray Music System includes/uses a distribution system including a transmission system operable to transmit via the distribution network (*e.g.*, AT&T's U-verse® distribution network) a media channel (*e.g.*, a "Classic Rock" media channel) comprising a stream of audio and video data (*e.g.*, audio data for the song "Back on the Chain Gang" or "Workin' for MCA" and video data including song title, artist name, and album art data).

Exhibit 5: Stingray's Infringement of the '121 Patent

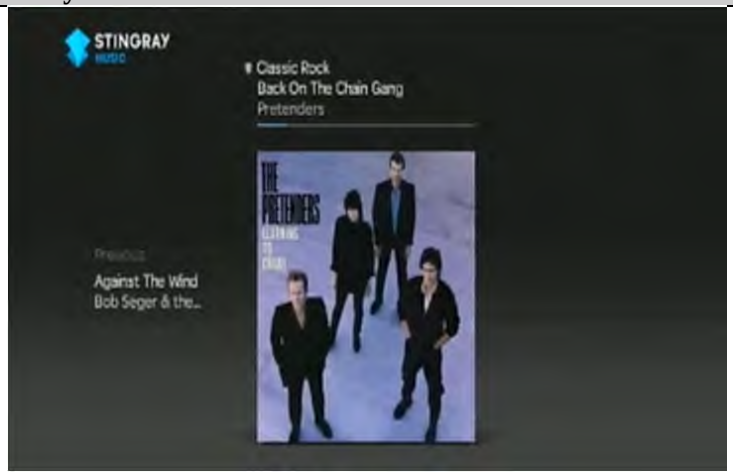
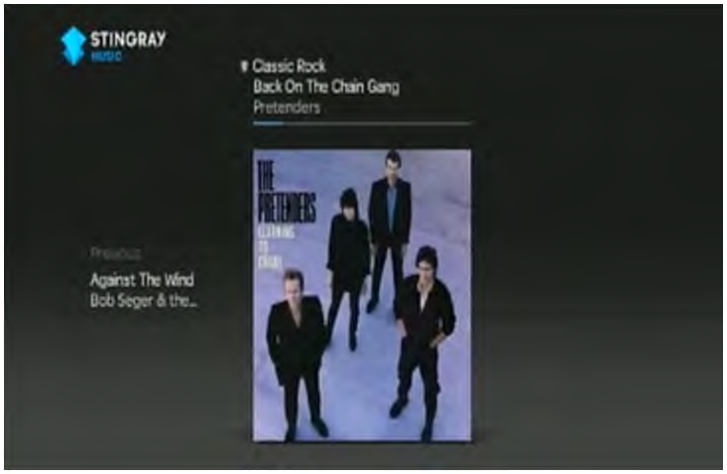
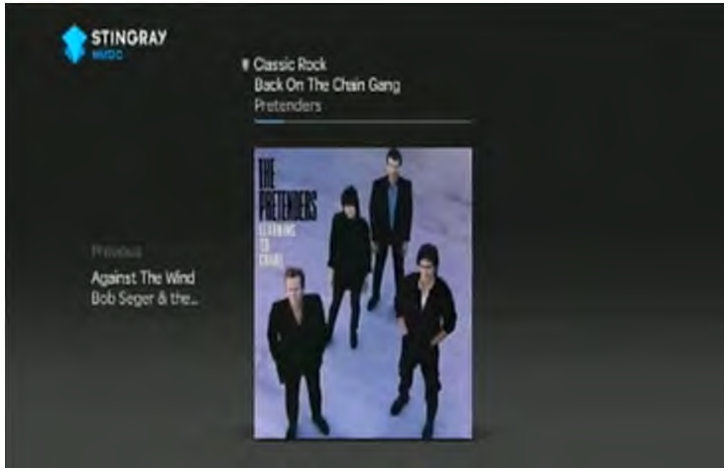
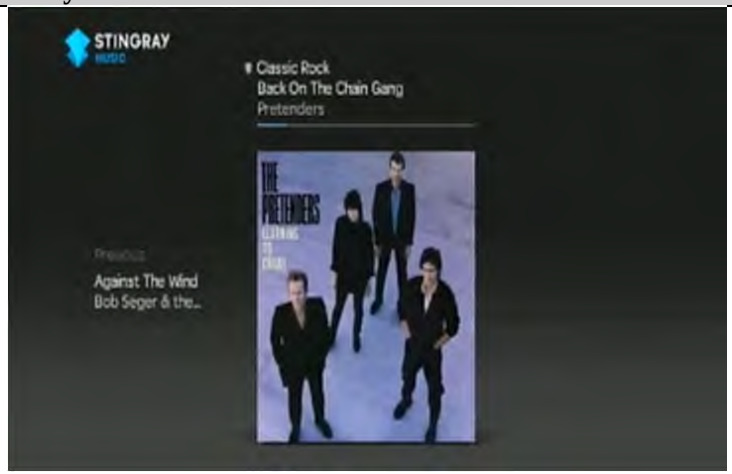
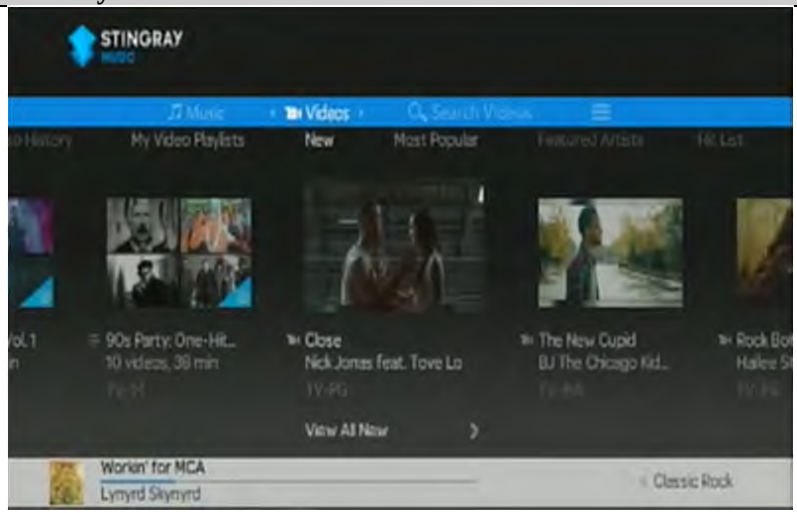
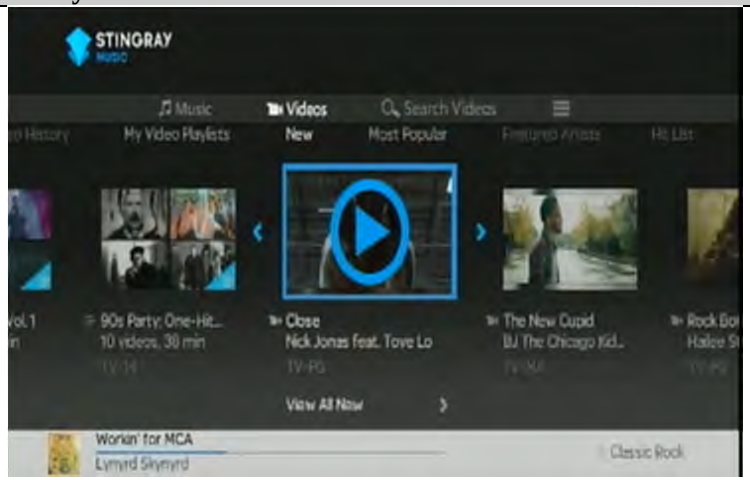
#	'121 Patent	Stingray Music System/Method
		
1d	the set-top-box is operable to: (1) receive the media channel via the distribution network,	In the Stingray Music System, the set-top-box is operable to receive the media channel (*e.g.*, a "Classic Rock" media channel) via the distribution network. 

Exhibit 5: Stingray's Infringement of the '121 Patent

#	'121 Patent	Stingray Music System/Method
1e	(2) reproduce the stream of audio data included in the received media channel for a user of the client system to hear,	In the Stingray Music system, the set-top-box is operable to reproduce the stream of audio data (*e.g.*, audio data for the song "Back on the Chain Gang" or "Workin' for MCA") included in the received media channel (*e.g.*, the "Classic Rock" media channel) for a user of the client system (*e.g.*, the device running the Stingray Music app) to hear. 
1f	(3) display video corresponding to the stream of video data included in the received media channel on a display device for the user to see,	In the Stingray Music System, the set-top-box is operable to display video corresponding to the stream of video data (*e.g.*, video corresponding to the song title, artist name, and album art data for the song "Back on the Chain Gang" or "Workin' for MCA") included in the received media channel (*e.g.*, the "Classic Rock" media channel) on a display device for the user to see.

#	'121 Patent	Stingray Music System/Method
		
1g	(4) receive via the distribution network video identifier information comprising an identifier for identifying an available on-demand video while displaying on the display device the video corresponding to the stream of video data included in the received media channel,	In the Stingray Music System, the set-top-box is operable to receive via the distribution network video identifier information comprising an identifier (*e.g.*, a thumbnail or title identifying a music video for the song entitled "Close") for identifying an available on-demand video (*e.g.*, the music video for the song entitled "Close") while displaying on the display device the video corresponding to the stream of video data (*e.g.*, the video corresponding to the song title, artist name, and album art data) included in the received media channel (*e.g.*, the "Classic Rock" media channel).

#	'121 Patent	Stingray Music System/Method
		
1h	(5) display a user selectable element for requesting the available on-demand video on the display device so that the user selectable element is displayed on the display device together with at least a portion of the video corresponding to the stream of video data as a result of receiving the video identifier information transmitted to the set-top-box using the distribution network, the user selectable element being associated with the available on-demand video, and	In the Stingray Music System, the set-top-box is operable to display a user selectable element (*e.g.*, a thumbnail image for the music video for the song entitled "Close") for requesting the available on-demand video (*e.g.*, the music video for the song entitled "Close") on the display device so that the user selectable element is displayed on the display device together with at least a portion of the video corresponding to the stream of video data (*e.g.*, video corresponding to the song title, artist name, and album art data for the song "Back on the Chain Gang" or "Workin' for MCA") as a result of receiving the video identifier information (*e.g.*, the thumbnail or title identifying a music video for the song entitled "Close") transmitted to the set-top-box using the distribution network. The user selectable element (*e.g.*, the thumbnail image for the music video for the song entitled "Close") is associated with the available on-demand video (*e.g.*, the music video for the song entitled "Close").

#	'121 Patent	Stingray Music System/Method
		
1i	(6) in response to the user of the set-top-box selecting the user selectable element, causing an on-demand video system to transmit to the set-top-box the available on-demand video by transmitting to the on-demand video system an on-demand request message.	In the Stingray Music System, the set-top-box is operable to, in response to the user of the set-top-box selecting the user selectable element (*e.g.*, the thumbnail or title identifying the music video for the song entitled "Close"), causing an on-demand video system (*e.g.*, the UbiquiCAST on-demand video system operated by Stingray alone or in conjunction with AT&T U-verse®) to transmit to the set-top-box the available on-demand video (*e.g.*, the music video for the song entitled "Close") by transmitting to the on-demand video system an on-demand request message (*e.g.*, a message indicating that the thumbnail or title identifying the music video for the song entitled "Close" was selected).

#	'121 Patent	Stingray Music System/Method
		
2a	The system of claim 1,	*See* claim 1, above.
2b	wherein the on-demand request message includes information identifying the on-demand video.	In the Stingray Music System, the on-demand request message includes information identifying the on-demand video (*e.g.*, identifying the music video for the song entitled "Close").

Exhibit 5: Stingray's Infringement of the '121 Patent

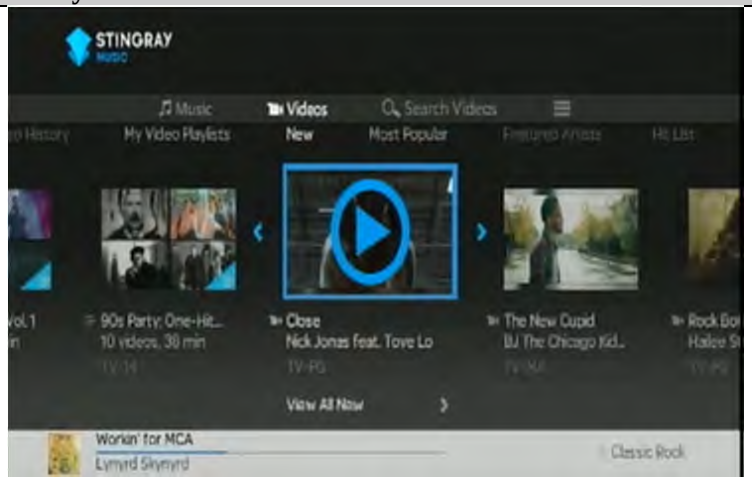
#	'121 Patent	Stingray Music System/Method
		
3a	The system of claim 1,	*See* claim 1, above.
3b	wherein the audio data is associated with an artist and music format, and the meta information comprises information for identifying the artist and/or music format.	In the Stingray Music System, the audio data is associated with an artist and music format (*e.g.*, "Pretenders," "Classic Rock"), and the meta information comprises information for identifying the artist and/or music format (*e.g.*, information identifying the artist "Pretenders," and/or music format "Classic Rock").

Exhibit 5: Stingray's Infringement of the '121 Patent

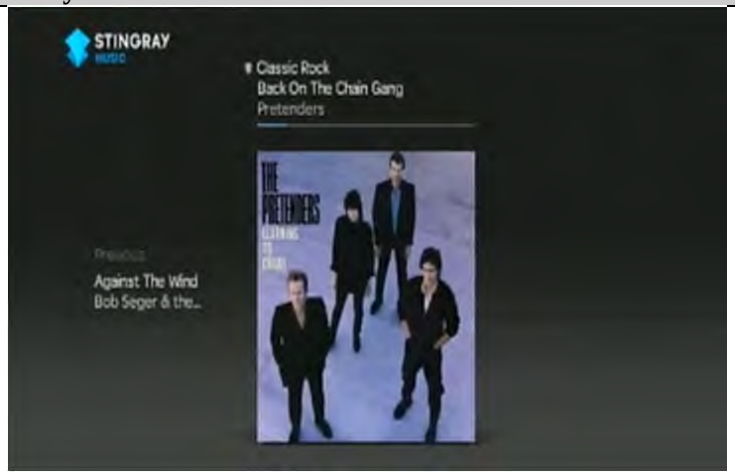
#	'121 Patent	Stingray Music System/Method
		
4a	The system of claim 1,	*See* claim 1, above.
4b	wherein the user selectable element is a distinct button.	In the Stingray Music System, the user selectable element is a distinct button (*e.g.*, a play button)

Exhibit 5: Stingray's Infringement of the '121 Patent

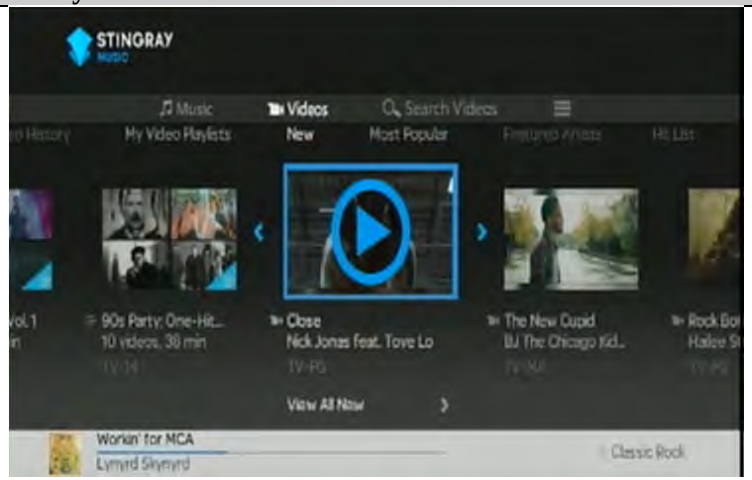
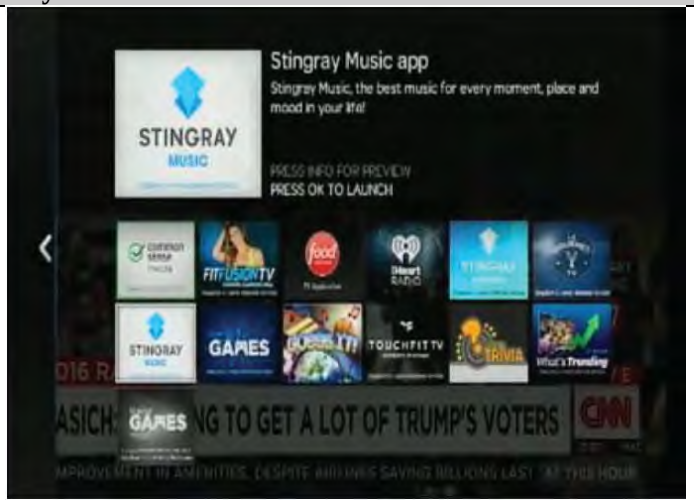
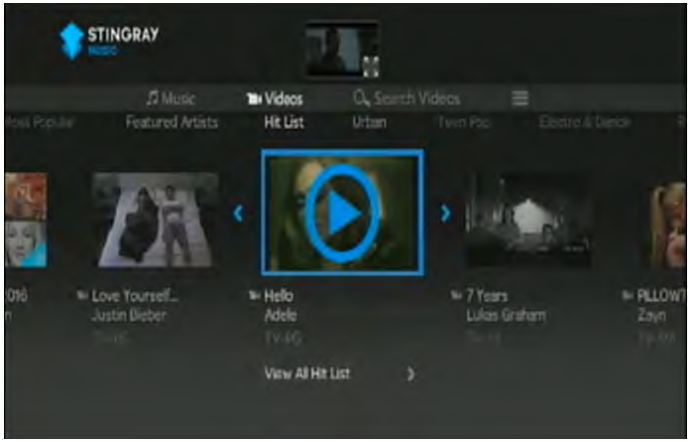
#	'121 Patent	Stingray Music System/Method
		
6a	A method for providing an on-demand service to a user of a set-top-box, comprising:	The Stingray Music Method, which includes the Stingray Music TV app on AT&T's U-verse® platform, is a method for providing an on-demand service to a user of a set-top-box. *See, e.g.*, Stingray Music Website "Music Videos on Demand Service," available at http://music.stingray.com/en_US/about/MVOD (last accessed August 5, 2016) ("[t]he Stingray Music service offering now includes Music Videos on Demand") (MC-Stingray00119564).

Exhibit 5: Stingray's Infringement of the '121 Patent

#	'121 Patent	Stingray Music System/Method
		 
6b	receiving at the set-top-box via a cable connected to a network a media channel comprising a stream of audio and video	The Stingray Music Method receives at the set-top-box via a cable connected to a network (*e.g.*, AT&T's U-verse® distribution network) a media channel (*e.g.*, the "Classic Rock" media channel) comprising a stream of audio and video data (*e.g.*, audio data for the song "Back on the Chain Gang" or "Workin' for MCA" and video

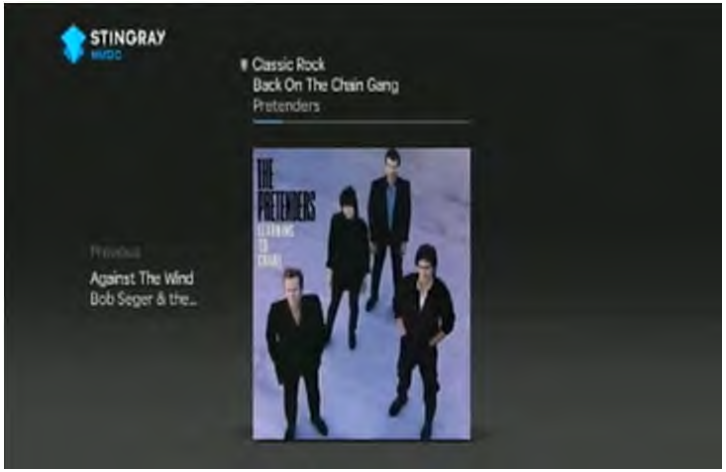
#	'121 Patent	Stingray Music System/Method
	data;	data including song title, artist name, and album art data). *See, e.g.*, AT&T Newsroom "Stingray Music Brings All Good Vibes to AT&T U-verse Customers" (Oct. 29, 2014), available at about.att.com/story/stingray_music_app_on_uverse_tv.html (last accessed August 4, 2016) ("the new Stingray Music app, available at no additional charge, will have more than 100 streaming music channels") (MC-Stingray00119568); Stingray Music website "Continuous music service," available at http://music.stingray.com/en_US/about/baseService (last accessed August 4, 2016) ("The Stingray Music continuous music network provides its listeners with a selection of close to fifty music channels, all commercial-free and uninterrupted, that cover a large variety of music genres, from rock to pop to jazz, to classical or international, delivered in pristine quality digital audio.") (MC-Stingray00119561). 
6c	the set-top-box displaying on a display device video corresponding to the video data stream;	In the Stingray Music Method, the set-top-box displays on a display device video corresponding to the video data stream (*e.g.*, video corresponding to the song title, artist name, and album art data for the song "Back on the Chain Gang" or "Workin' for MCA").

Exhibit 5: Stingray's Infringement of the '121 Patent

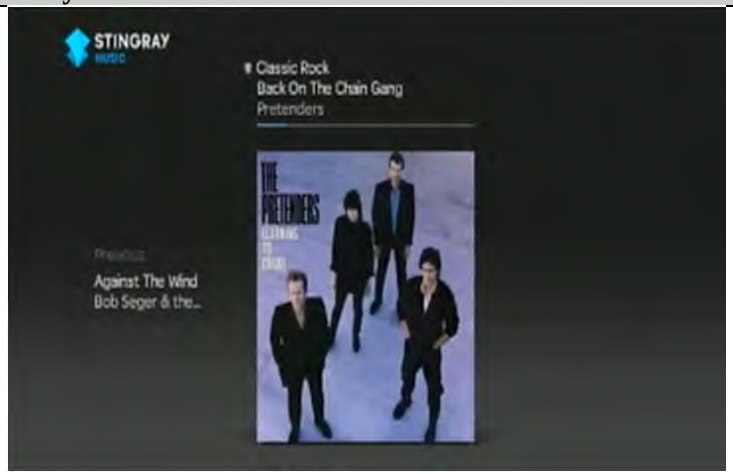
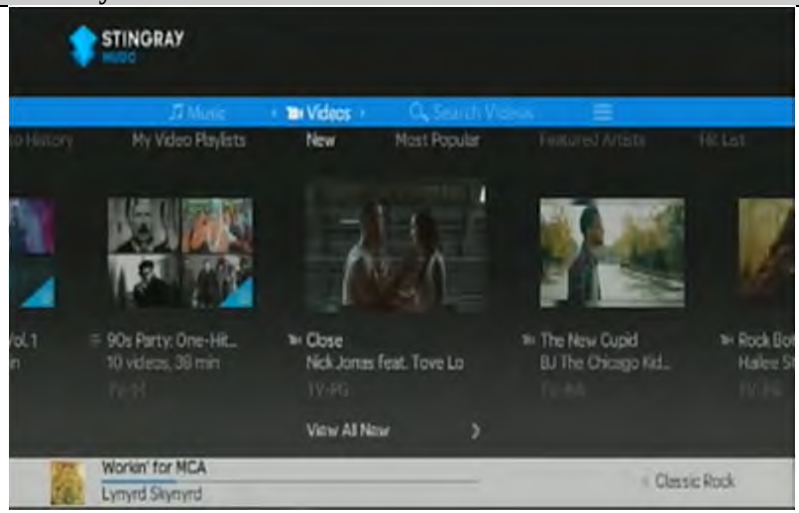
#	'121 Patent	Stingray Music System/Method
		
6d	while displaying said video, the set-top-box receiving video identifier information transmitted via the cable connected to the network, said video identifier information comprising an identifier for identifying an available on-demand video;	In the Stingray Music Method, while displaying said video (*e.g.*, the video corresponding to the song title, artist name, and album art data for the song "Back on the Chain Gang" or "Workin' for MCA"), the set-top-box receives video identifier information (*e.g.*, a thumbnail or title identifying a music video for the song entitled "Close") transmitted via the cable connected to the network. The video identifier information comprises an identifier for identifying an available on-demand video (*e.g.*, the music video for the song entitled "Close").

Exhibit 5: Stingray's Infringement of the '121 Patent

#	'121 Patent	Stingray Music System/Method
		
6e	the set top box displaying on the display device, as a result of receiving said video identifier information, a user selectable element for requesting the available on-demand video while also displaying video corresponding to the video data stream so that the user can see the user selectable element while also seeing the displayed video corresponding to the video data stream, the user selectable element being associated with the available on-demand video;	In the Stingray Music Method, the set top box displays on the display device, as a result of receiving said video identifier information (*e.g.*, the thumbnail or title identifying the music video for the song entitled "Close"), a user selectable element (*e.g.*, a thumbnail image for the music video for the song entitled "Close") for requesting the available on-demand video (*e.g.*, the music video for the song entitled "Close") while also displaying video corresponding to the video data stream (*e.g.*, the video corresponding to the song title, artist name, and album art data for the song "Back on the Chain Gang" or "Workin' for MCA") so that the user can see the user selectable element (*e.g.*, the thumbnail image for the music video for the song entitled "Close") while also seeing the displayed video corresponding to the video data stream (*e.g.*, the video corresponding to the song title, artist name, and album art data for the song "Back on the Chain Gang" or "Workin' for MCA"). The user selectable element (*e.g.*, the thumbnail image for the music video for the song entitled "Close") is associated with the available on-demand video (*e.g.*, the music video for the song entitled "Close").

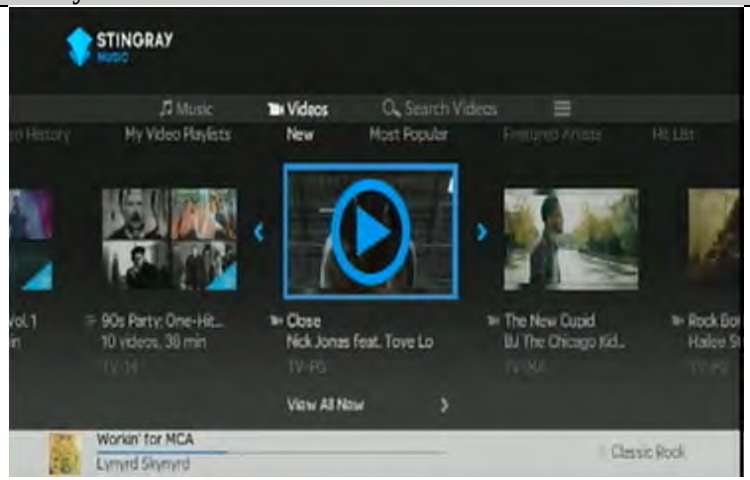
#	'121 Patent	Stingray Music System/Method
		
6f	the set-top-box detecting that the user has selected the selectable element for requesting the available on-demand video; and	In the Stingray Music Method, the set-top-box detects that the user has selected the selectable element (*e.g.*, the thumbnail image for the music video for the song entitled "Close") for requesting the available on-demand video (*e.g.*, the music video for the song entitled "Close").
6g	in response detecting that the user has selected the selectable element, the set-top-box causing an on-demand video system to transmit to the set-top-box the available on-demand video, wherein causing the on-demand video system to transmit to the set-top-box the available on-demand video comprises the set-top-box transmitting to the on-demand video system an on-demand request message configured to cause the on-demand video system to transmit to the set-top-box the available on-demand video.	In the Stingray Music Method, in response detecting that the user has selected the selectable element (*e.g.*, the thumbnail or title identifying the music video for the song entitled "Close"), the set-top-box causing an on-demand video system (*e.g.*, the UbiquiCAST on-demand video system operated by Stingray alone or in conjunction with AT&T U-verse®) to transmit to the set-top-box the available on-demand video (*e.g.*, the music video for the song entitled "Close"). Causing the on-demand video system to transmit to the set-top-box the available on-demand video (*e.g.*, the music video for the song entitled "Close") comprises the set-top-box transmitting to the on-demand video system an on-demand request message (*e.g.*, a message indicating that the thumbnail or title identifying the music video for the song entitled "Close" was selected) configured to cause the on-demand video system to transmit to the set-top-box the available on-demand video (*e.g.*, the music video for the song entitled "Close").

Exhibit 5: Stingray's Infringement of the '121 Patent

#	'121 Patent	Stingray Music System/Method
		
7a	The method of claim 6,	*See* claim 6, above.
7b	wherein the media channel is a digital music channel.	In the Stingray Music Method, the media channel is a digital music channel. *See, e.g.*, AT&T Newsroom "Stingray Music Brings All Good Vibes to AT&T U-verse Customers" (Oct. 29, 2014), available at about.att.com/story/stingray_music_app_on_uverse_tv.html (last accessed August 4, 2016) ("the new Stingray Music app, available at no additional charge, will have more than 100 streaming music channels") (MC-Stingray00119568); Stingray Music website "Continuous music service," available at http://music.stingray.com/en_US/about/baseService (last accessed August 4, 2016) ("The Stingray Music continuous music network provides its listeners with a selection of close to fifty music channels, all commercial-free and uninterrupted, that cover a large variety of music genres, from rock to pop to jazz, to classical or international, delivered in pristine quality digital audio.") (MC-Stingray00119561).
8a	The method of claim 6,	*See* claim 6, above.

Exhibit 5: Stingray's Infringement of the '121 Patent

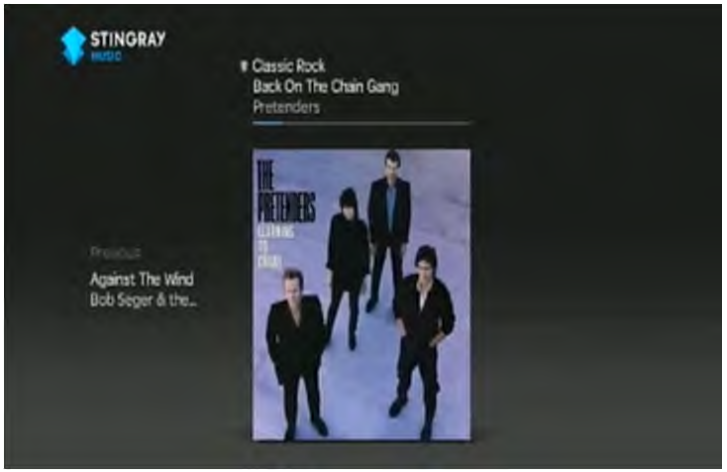
#	'121 Patent	Stingray Music System/Method
8b	wherein the audio data is associated with an artist and music format, and the meta information comprises information for identifying the artist and/or music format.	In the Stingray Music Method, the audio data is associated with an artist and music format (*e.g.*, "Pretenders," "Classic Rock"), and the meta information comprises information for identifying the artist and/or music format (*e.g.*, information identifying the art "Pretenders," and/or music format "Classic Rock"). 
10a	The method of claim 6, further comprising:	*See* claim 6, above.
10b	causing the client system to display a second selectable element;	The Stingray Music Method causes the client system to display a second selectable element (*e.g.*, the "Rock & Alternative" selectable element).

Exhibit 5: Stingray's Infringement of the '121 Patent

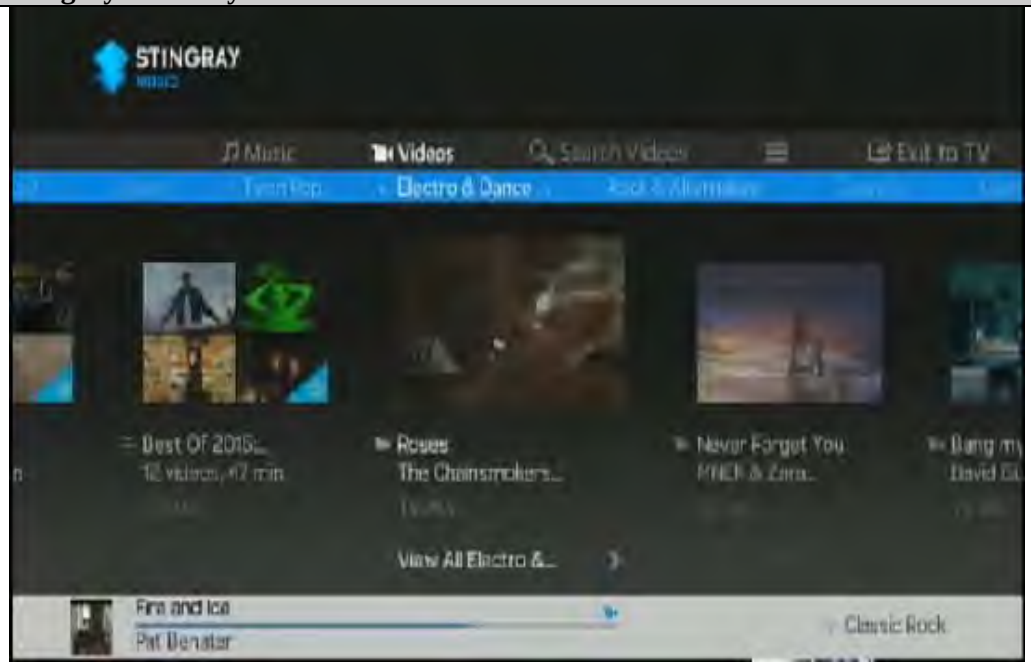
#	'121 Patent	Stingray Music System/Method
		
10c	providing information to the client system that causes the client system to transmit to the on-demand system information indicating that the second element was selected in response to the user selecting the second element;	The Stingray Music method provides information (*e.g.*, an indication of a selection of "Rock & Alternative") to the client system that causes the client system to transmit to the on-demand system information indicating that the second element was selected in response to the user selecting the second element (*e.g.*, the user activated the "Rock & Alternative" selectable element).

Exhibit 5: Stingray's Infringement of the '121 Patent

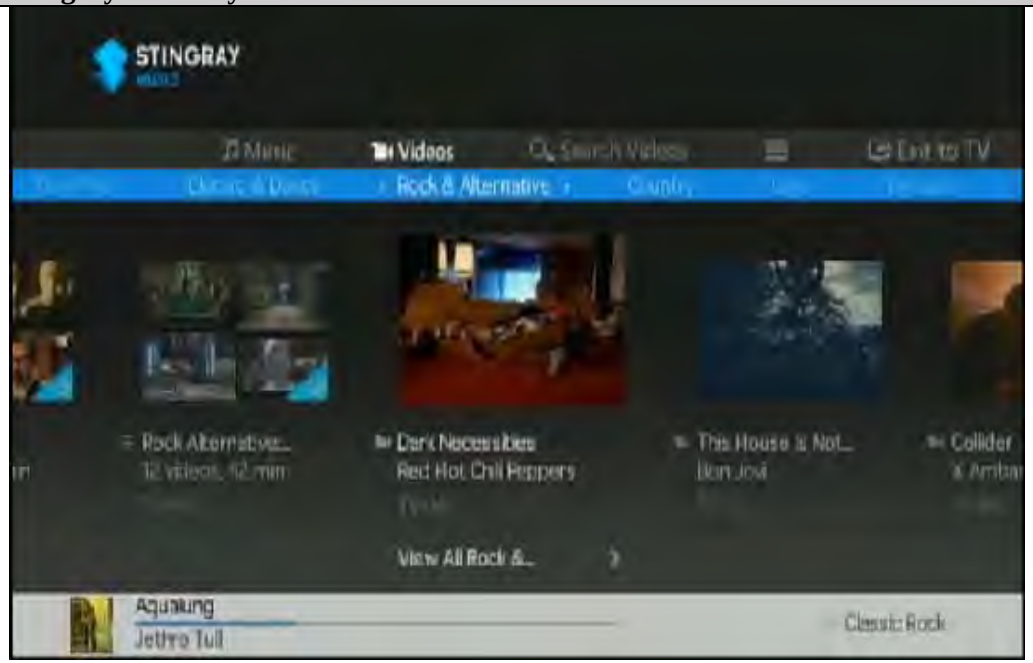
#	'121 Patent	Stingray Music System/Method
		
10d	after the on-demand system receives the information indicating that the second element was selected, transmitting from the on-demand system to the client system information identifying a set of videos, wherein	In the Stingray Music Method, after the on-demand system receives the information indicating that the second element was selected, transmitting from the on-demand system to the client system information identifying a set of videos (*e.g.*, thumbnail images identifying a set of videos).

Exhibit 5: Stingray's Infringement of the '121 Patent

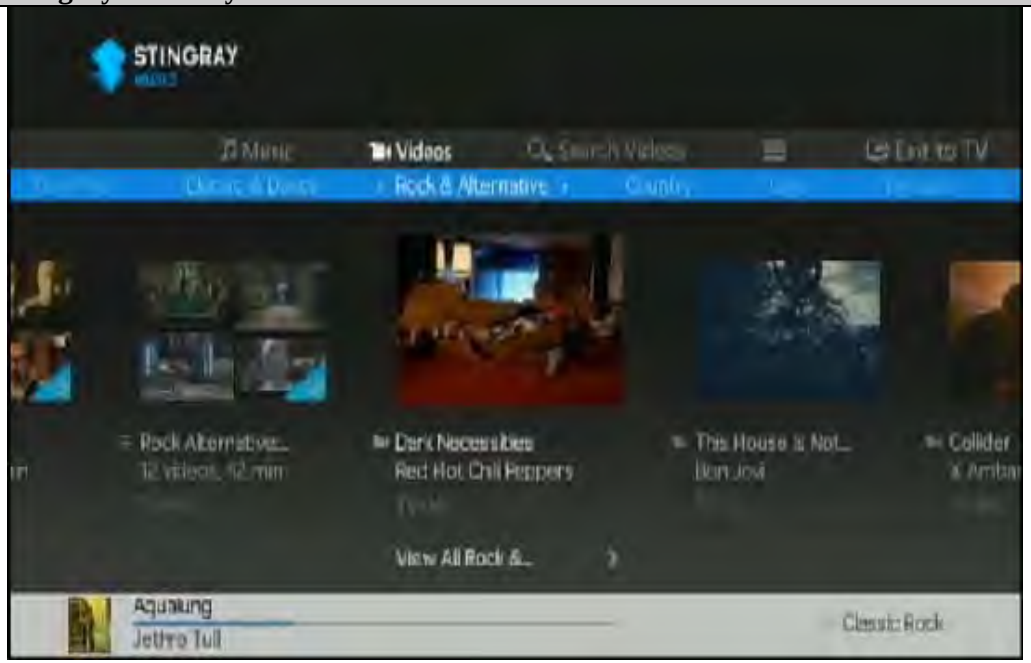
#	'121 Patent	Stingray Music System/Method
		
10e	each video in said set is associated with a format associated with the broadcast media channel isolated by the client system when the user selected the second element.	In the Stingray Music Method, each video in said set is associated with a format (*e.g.*, "Rock & Alternative") associated with the broadcast media channel isolated by the client system when the user selected the second element (*e.g.*, the "Rock & Alternative" selectable element).
11a	The method of claim 6, further comprising:	*See* claim 6, above.
11b	causing the client system to display a second selectable element;	The Stingray Music Method causes the client system to display a second selectable element (*e.g.*, the "Most Popular" selectable element).

Exhibit 5: Stingray's Infringement of the '121 Patent

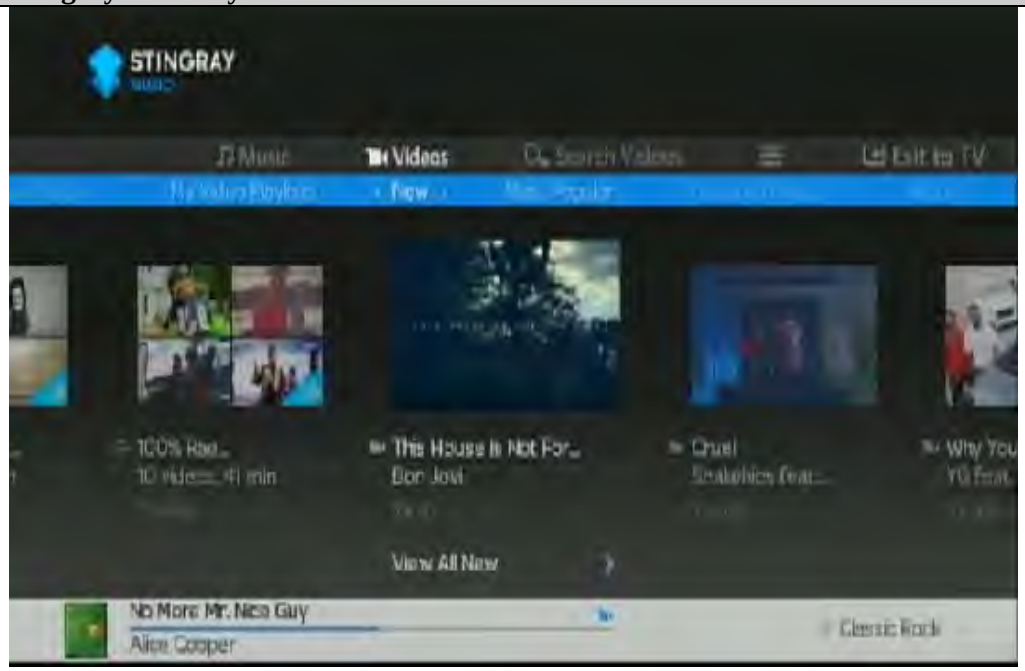
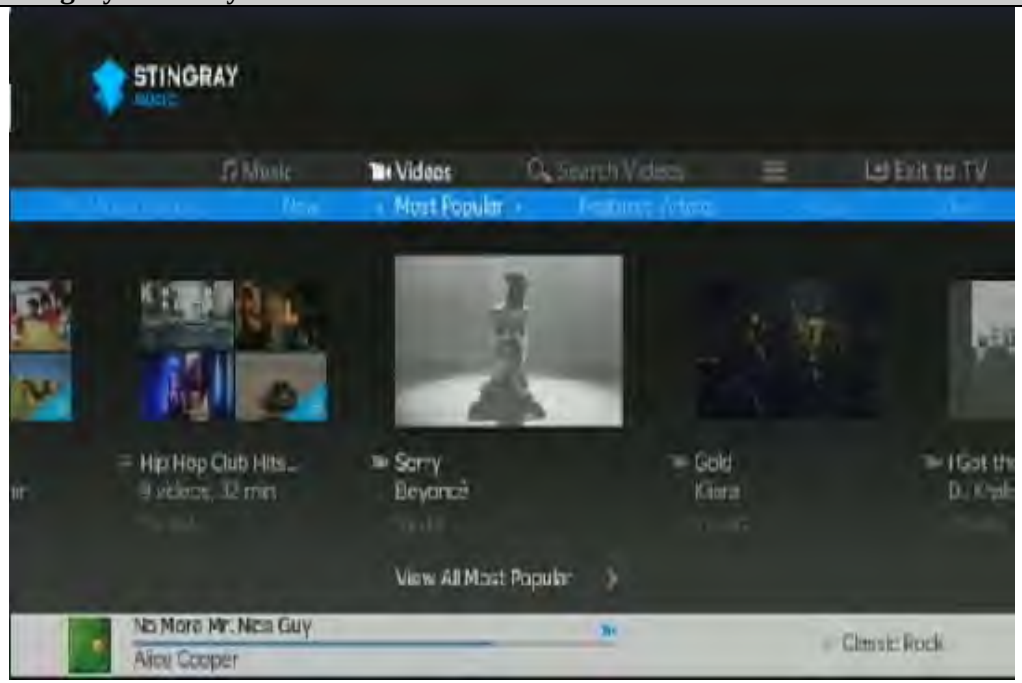
#	'121 Patent	Stingray Music System/Method
		
11c	providing information to the client system that causes the client system to transmit to the on-demand system information indicating that the second element was selected in response to the user selecting the second element;	The Stingray Music Method provides information to the client system (*e.g.*, an indication of a selection of "Most Popular") that causes the client system to transmit to the on-demand system information (*e.g.*, an indication of an activation of "Most Popular") indicating that the second element was selected in response to the user selecting the second element (*e.g.*, in response to the user selecting "Most Popular").

Exhibit 5: Stingray's Infringement of the '121 Patent

#	'121 Patent	Stingray Music System/Method
		
11d	after the on-demand system receives the information indicating that the second element was selected, transmitting from the on-demand system to the client system information identifying a set of popular music videos within an area in which the client system is located.	The Stingray Music Method, after the on-demand system receives the information indicating that the second element was selected (*e.g.*, an indication that the "Most Popular" element was selected), transmitting from the on-demand system to the client system information identifying a set of popular music videos within an area in which the client system is located (*e.g.*, thumbnail images identifying a set of popular music videos in an area in which the client system is located).

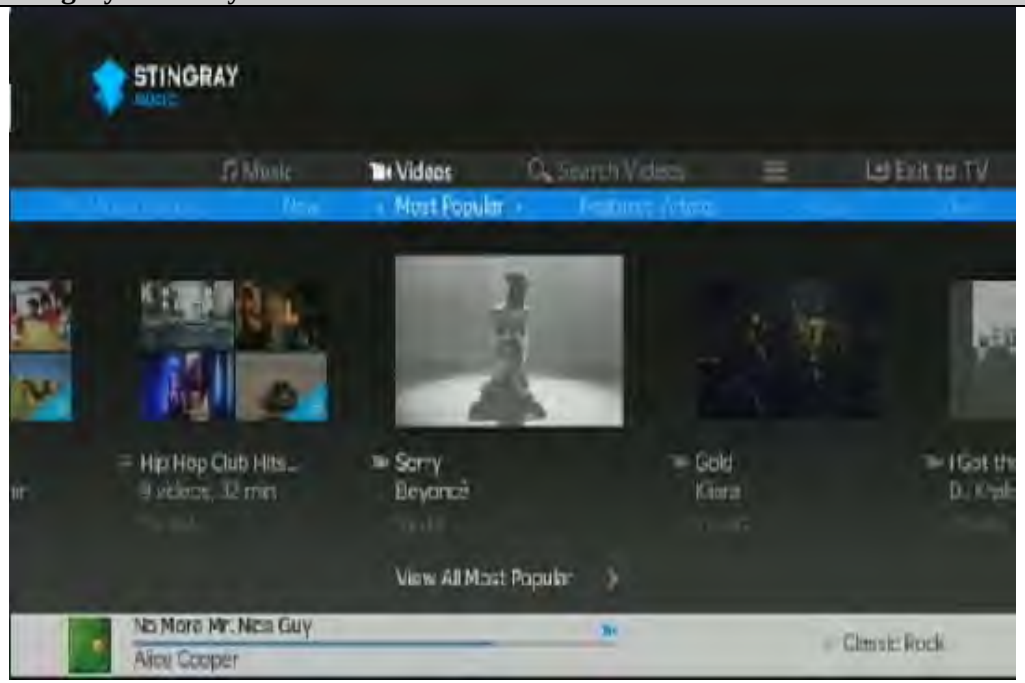
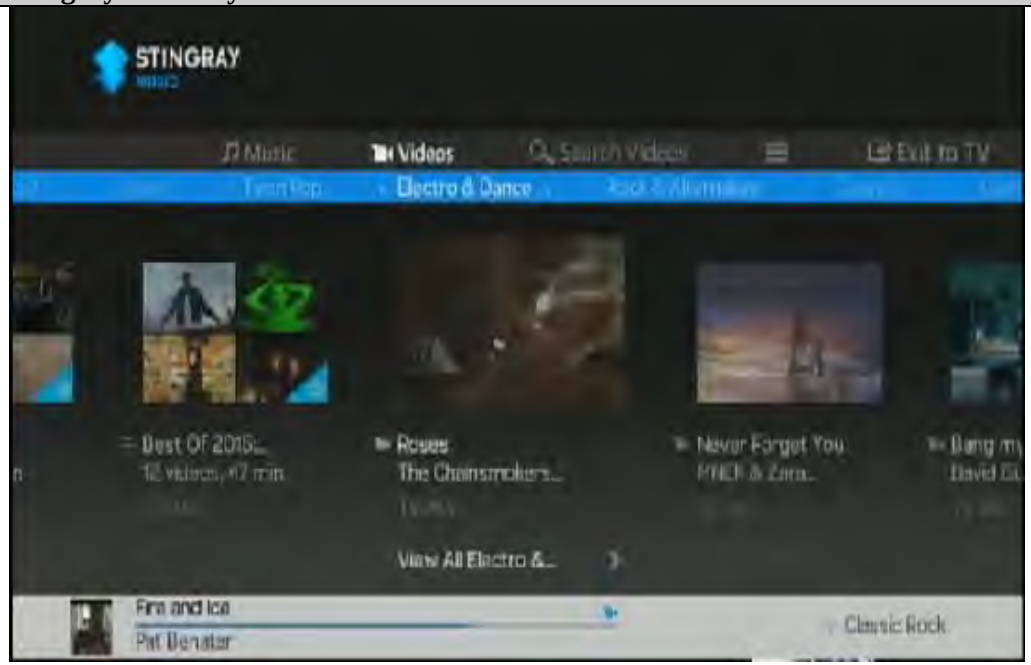
#	'121 Patent	Stingray Music System/Method
		
12a	The method of claim 6, further comprising:	*See* claim 6, above.
12b	causing the client system to display a second selectable element;	The Stingray Music System causes the client system to display a second selectable element (*e.g.*, the "Rock & Alternative" selectable element).

Exhibit 5: Stingray's Infringement of the '121 Patent

#	'121 Patent	Stingray Music System/Method
		
12c	providing information to the client system that causes the client system to transmit to the on-demand system information indicating that the second element was selected in response to the user selecting the second element; and	The Stingray Music Method provides information (*e.g.*, an indication of a selection of "Rock & Alternative") to the client system that causes the client system to transmit to the on-demand system information indicating that the second element was selected in response to the user selecting the second element (*e.g.*, the user activated the "Rock & Alternative" selectable element).

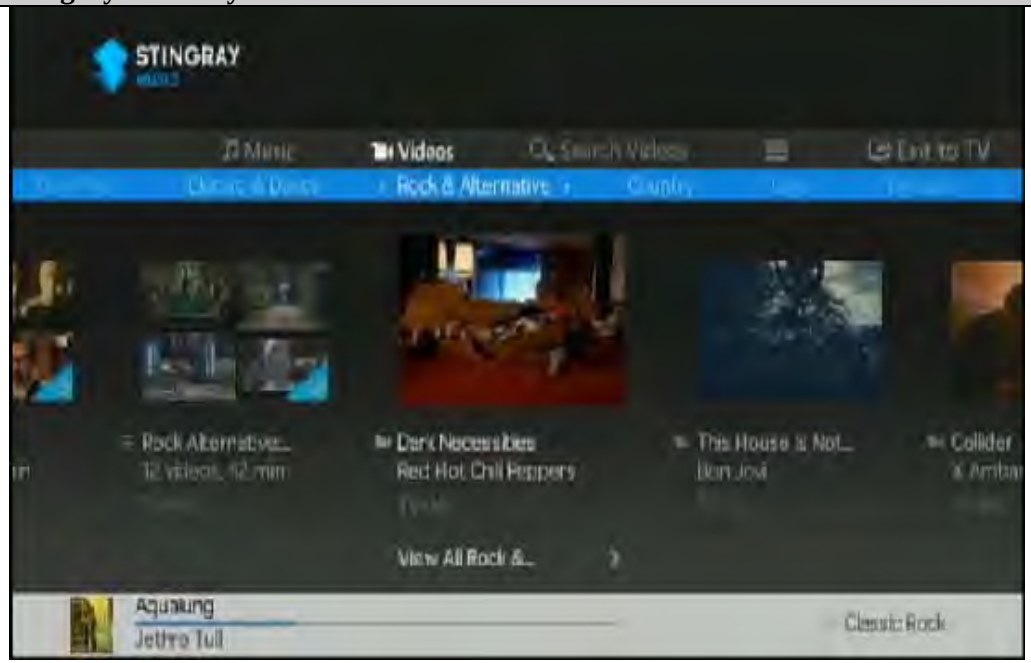
#	'121 Patent	Stingray Music System/Method
		
12d	after the on-demand system receives the information indicating that the second element was selected, transmitting from the on-demand system to the client system information identifying a set of sub-categories associated with a format associated with the broadcast media channel isolated by the client system when the user selected the second element.	The Stingray Music Method, after the on-demand system receives the information indicating that the second element was selected, transmits from the on-demand system to the client system information identifying a set of sub-categories (*e.g.*, artists) associated with a format (*e.g.*, "Rock & Alternative") associated with the broadcast media channel isolated by the client system when the user selected the second element.

Exhibit 5: Stingray's Infringement of the '121 Patent

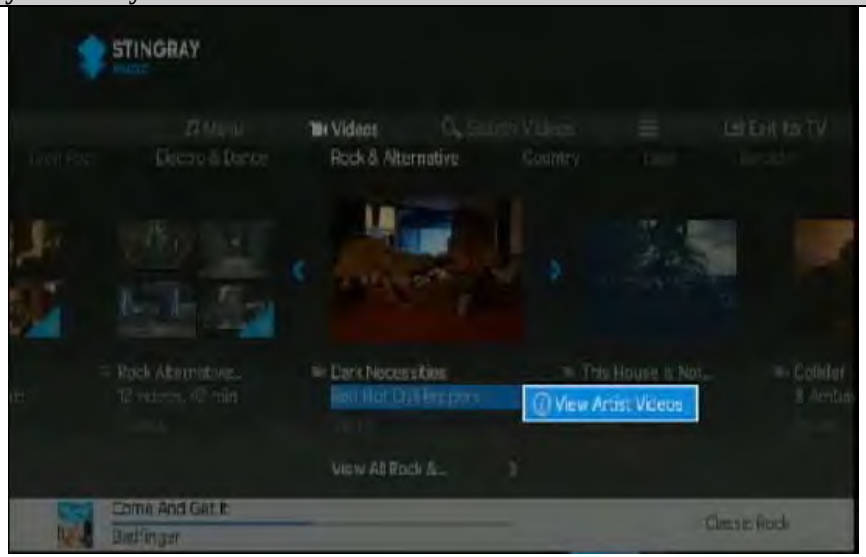
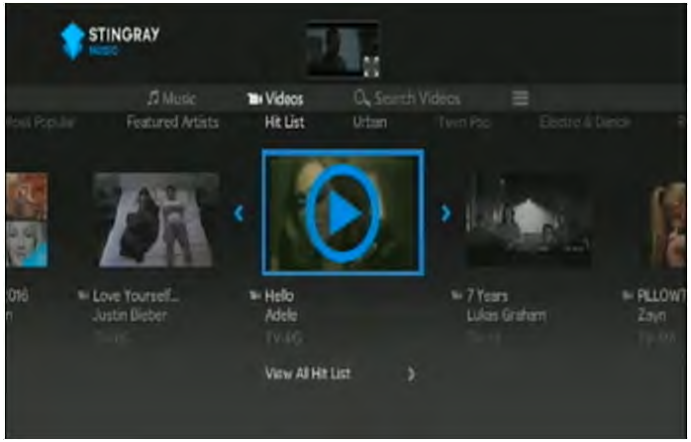
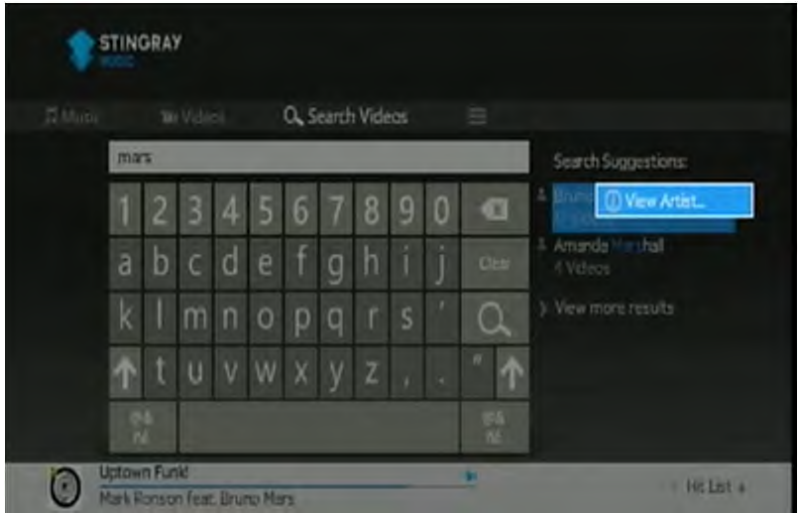
#	'121 Patent	Stingray Music System/Method
		
14a	A method for providing an on-demand service to a user of a set-top-box, comprising:	The Stingray Music Method, which includes the Stingray Music TV app on AT&T's U-verse® platform, is a method for providing an on-demand service to a user of a set-top-box. *See, e.g.*, Stingray Music Website "Music Videos on Demand Service," available at http://music.stingray.com/en_US/about/MVOD (last accessed August 5, 2016) ("[t]he Stingray Music service offering now includes Music Videos on Demand") (MC-Stingray00119564).

Exhibit 5: Stingray's Infringement of the '121 Patent

#	'121 Patent	Stingray Music System/Method
		 
14b	receiving at the set-top-box via a cable connected to a network a media channel comprising a stream of audio and video	The Stingray Music Method receives at the set-top-box via a cable connected to a network (*e.g.*, AT&T's U-verse® distribution network) a media channel (*e.g.*, the "Hit List" media channel) comprising a stream of audio and video data (*e.g.*, audio corresponding to the song "Uptown Funk!" and video data including song title, artist

#	'121 Patent	Stingray Music System/Method
	data;	name, and album art data). *See*, *e.g.*, AT&T Newsroom "Stingray Music Brings All Good Vibes to AT&T U-verse Customers" (Oct. 29, 2014), available at about.att.com/story/stingray_music_app_on_uverse_tv.html (last accessed August 4, 2016) ("the new Stingray Music app, available at no additional charge, will have more than 100 streaming music channels") (MC-Stingray00119568); Stingray Music website "Continuous music service," available at http://music.stingray.com/en_US/about/baseService (last accessed August 4, 2016) ("The Stingray Music continuous music network provides its listeners with a selection of close to fifty music channels, all commercial-free and uninterrupted, that cover a large variety of music genres, from rock to pop to jazz, to classical or international, delivered in pristine quality digital audio.") (MC-Stingray00119561). 
14c	the set-top-box displaying on a display device video corresponding to the video data stream;	In the Stingray Music Method, the set-top-box displays on a display device video corresponding to the video data stream (*e.g.*, video corresponding to the song title, artist name, and album art data for the song "Uptown Funk!").

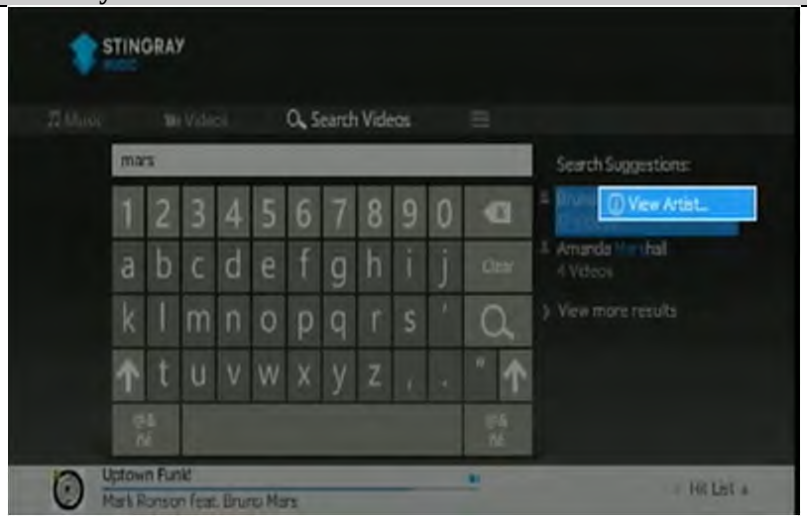
#	'121 Patent	Stingray Music System/Method
		
14d	while displaying said video, the set-top-box receiving on-demand video information transmitted via the cable connected to the network;	In the Stingray Music Method, while displaying said video (*e.g.*, the video corresponding to the song title, artist name, and album art data for the song "Uptown Funk!"), the set-top-box receives on-demand video information (*e.g.*, search suggestions resulting from the searching on-demand videos for "mars") transmitted via the cable connected to the network.

Exhibit 5: Stingray's Infringement of the '121 Patent

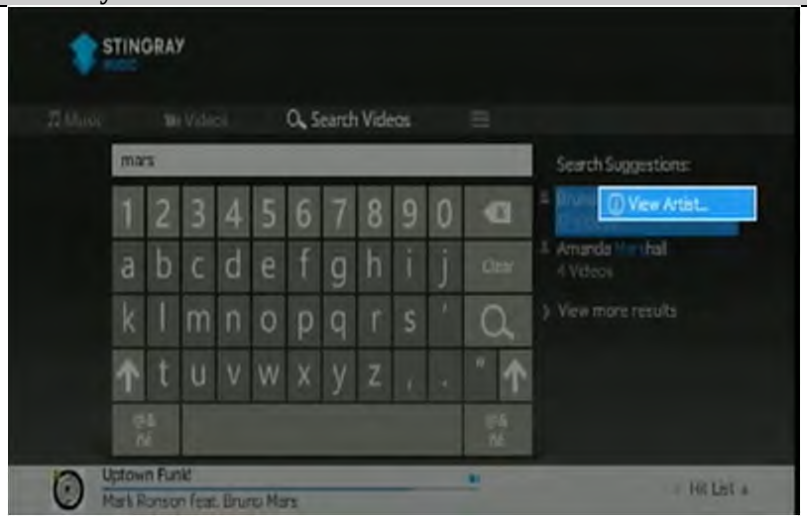
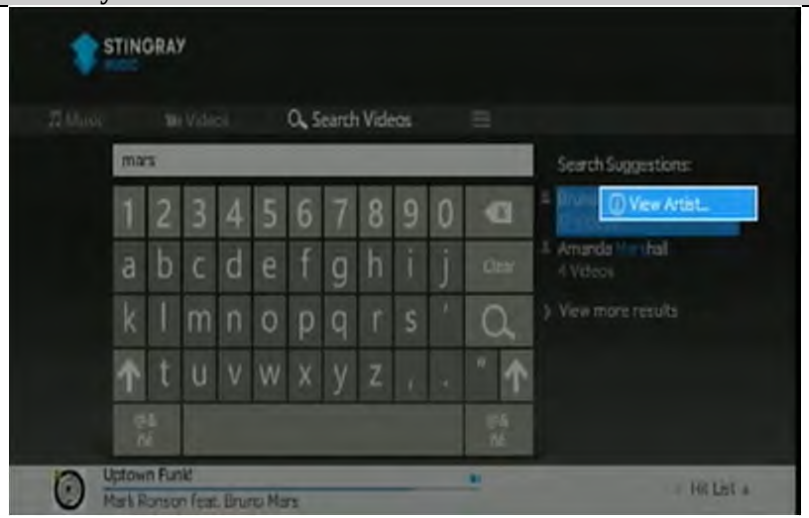
#	'121 Patent	Stingray Music System/Method
		
14e	the set top box displaying on the display device, as a result of receiving the on-demand video information, a user selectable element for requesting information identifying a set of available on-demand videos while also displaying the video corresponding to the video data stream so that the user can see the user selectable element while also seeing the displayed video corresponding to the video data stream, the user selectable element being associated with the set of available on-demand videos;	In the Stingray Music Method, the set top box displays on the display device, as a result of receiving the on-demand video information (*e.g.*, the search suggestions resulting from searching on-demand videos for "mars"), a user selectable element (*e.g.*, a user selectable element for the suggested search for Bruno Mars videos) for requesting information identifying a set of available on-demand videos (*e.g.*, the set of 12 available Bruno Mars on-demand videos) while also displaying the video corresponding to the video data stream (*e.g.*, the video corresponding to the song title, artist name, and album art data for the song "Uptown Funk!") so that the user can see the user selectable element (*e.g.*, the user selectable element for the suggested search for Bruno Mars videos) while also seeing the displayed video corresponding to the video data stream (*e.g.*, the video corresponding to the song title, artist name, and album art data for the song "Uptown Funk!"). The user selectable element (*e.g.*, the user selectable element for the suggested search for Bruno Mars videos) is associated with the set of available on-demand videos (*e.g.*, the set of 12 available Bruno Mars on-demand videos).

Exhibit 5: Stingray's Infringement of the '121 Patent

#	'121 Patent	Stingray Music System/Method
		
14f	in response to the user of the client system selecting the user selectable element, the set-top-box transmitting to an on-demand system an on-demand request message for causing the on-demand system to transmit to the set-top-box the information identifying the set of available on-demand videos;	In the Stingray Music Method, in response to the user of the client system selecting the user selectable element (*e.g.*, the user selectable element for the suggested search for Bruno Mars videos), the set-top-box transmits to an on-demand system (*e.g.*, the UbiquiCAST on-demand video system operated by Stingray alone or in conjunction with AT&T U-verse®) an on-demand request message for causing the on-demand system to transmit to the set-top-box the information identifying the set of available on-demand videos (*e.g.*, information identifying the set of 12 available Bruno Mars on-demand videos).

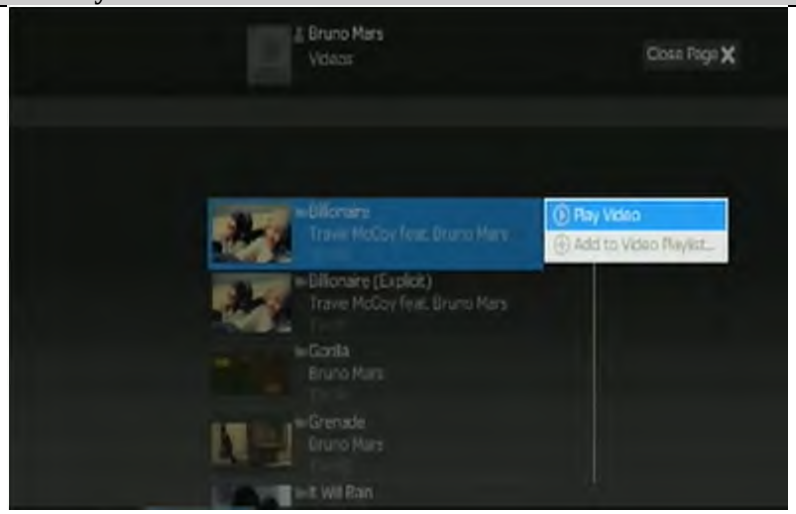
#	'121 Patent	Stingray Music System/Method
		
14g	the set-top-box receiving displaying a menu of the available on-demand videos as a result of receiving the information.	In the Stingray Music Method, the set-top-box displays a menu of the available on-demand videos (*e.g.*, a menu of the available Bruno Mars on-demand videos) as a result of receiving the information.

Exhibit 5: Stingray's Infringement of the '121 Patent

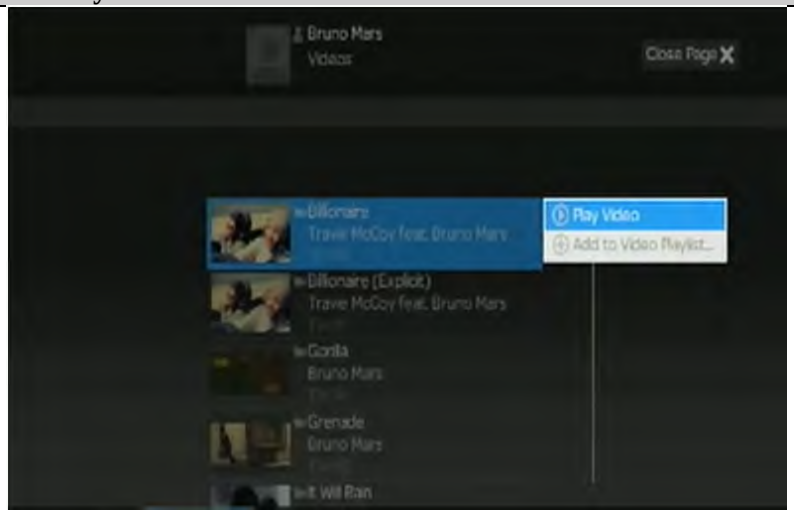
#	'121 Patent	Stingray Music System/Method
		
15a	The method of claim 14, further comprising:	*See* claim 14, above.
15b	in response to the user selecting one of the available on-demand videos identified in the menu, the set-top-box transmitting to an on-demand video system a second on-demand request message for causing the on-demand video system to transmit to the set-top-box the selected available on-demand video.	The Stingray Music Method, in response to the user selecting one of the available on-demand videos identified in the menu (*e.g.*, the on-demand video for the song "Billionaire"), the set-top-box transmits to an on-demand video system (*e.g.*, the UbiquiCAST on-demand video system operated by Stingray alone or in conjunction with AT&T U-verse®) a second on-demand request message for causing the on-demand video system to transmit to the set-top-box the selected available on-demand video (*e.g.*, the on-demand video for the song "Billionaire").

Exhibit 5: Stingray's Infringement of the '121 Patent

#	'121 Patent	Stingray Music System/Method
		

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

MUSIC CHOICE, *Plaintiff*, v. STINGRAY GROUP INC. (f/k/a STINGRAY DIGITAL GROUP INC.) and STINGRAY MUSIC USA, INC., *Defendants*.	§ § § § § § § § § § § §	C.A. No: 2:16-cv-00586-JRG-RSP (Lead Case) **FILED UNDER SEAL**

DEFENDANTS' *DAUBERT* MOTION TO EXCLUDE
CERTAIN OPINIONS AND TESTIMONY OF
MUSIC CHOICE'S DAMAGES EXPERT, DR. KEITH R. UGONE

TABLE OF CONTENTS

I. INTRODUCTION 1
II. BACKGROUND 2
A. Background of this Action 2
B. Music Choice and Its Music Services 3
C. Stingray and Its Music Services 4
D. The Patents-in-Suit 5
E. Dr. Ugone's Damages Reports 5
F. Dr. Ugone's Report On Commercial Success 6
III. ARGUMENT 6
A. Legal Standard 6
B. Dr. Ugone's Opinions With Respect To Lost Profits Should Be Excluded 7
1. Dr. Ugone Incorrectly Applied Panduit Factor 2 In Calculating Lost Profits With Respect To The Visual Complement Patent 8
2. Dr. Ugone's Calculation Of Lost Profits With Respect To The VOD Linking Patents Is Speculative And Unreliable 9
C. Dr. Ugone's Opinions With Respect To Price Erosion Should Be Excluded As Flawed, Speculative, And Unreliable 12
D. Dr. Ugone's Opinions With Respect To Commercial Success Should Be Excluded As Unreliable And Based On A Flawed Methodology 14
IV. CONCLUSION 15

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Page(s)

Cases

Crystal Semiconductor Corp. v. TriTech Microelectronics Int'l, Inc.,
246 F.3d 1336 (Fed. Cir. 2001).....11, 12

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No. 2:06-cv072, 2010 U.S. Dist. LEXIS 150694 (Feb. 25, 2010 E.D. Tex.).....14, 15

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509 U.S. 579 (1993).....6, 15

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147 Fed.Appx. 979 (Fed. Cir. 2005).....12, 14

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2001 U.S. Dist. LEXIS 26485 (E.D. Tex. Mar. 13, 2001).....14

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482 F.3d 347 (5th Cir. 2007) 7

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526 U.S. 137 (1999).....6

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547 Fed.Appx. 513 (5th Cir. 2013).....12

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2005 U.S. Dist LEXIS 47075 (E.D. Tex. Dec. 15, 2005).....10

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575 F.2d 1152 (6th Cir. 1078) 7, 8

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2012 U.S. Dist LEXIS 188907 (C.D. Cal. Feb. 24, 2012).....9, 12, 13

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No. 2:07-cv-497-TJW-CE, 2010 U.S. Dist. LEXIS 144244 (Dec. 13, 2010 E.D. Tex.).....7

U.S. v. Valencia,
600 F.3d 389 (5th Cir. 2010) 7

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Fed. R. Evid. 702 6

Defendants Stingray Group Inc. (f/k/a Stingray Digital Group Inc.) and Stingray Music USA, Inc. (collectively, "Stingray") respectfully move to exclude certain opinions and testimony of Plaintiff Music Choice's ("MC") damages expert, Dr. Keith R. Ugone.

I. INTRODUCTION

This is a patent infringement action involving increasingly irrelevant technology—linear audio and video on demand ("VOD") music channels transmitted to consumers by cable and satellite television providers. The number of cable and satellite television subscribers is rapidly declining each year. Nonetheless, MC's damages expert, Dr. Keith R. Ugone, opined that MC suffered over [redacted] in lost profits and price erosion damages based on the flawed assumption that, had Stingray not offered purportedly infringing products, the prices paid for MC's services by its customers—i.e., the same cable and satellite television providers whose subscriber counts are ***decreasing***—would not have changed. Dr. Ugone did not consider and/or discuss any market forces in making this assumption. Similarly, Dr. Ugone did not consider and/or discuss the ample evidence of [redacted] several years before Stingray even entered the market with its allegedly infringing technology. Instead, Dr. Ugone simply looked at what MC's customers agreed to pay immediately prior to Stingray's alleged infringement, and determined that was the only evidence needed to support his damages calculations. Accordingly, Dr. Ugone's lost profits and price erosion damages opinions are flawed, speculative, unreliable and should be excluded.

In addition, Dr. Ugone should be precluded from testifying about commercial success in support of MC's contention that U.S. Patent No. 9,357,245 ("the '245 patent") is not obvious over the

prior art.[1] Dr. Ugone's opinion is devoid of any evidence that MC's services purportedly covered by the '245 patent, namely, MC's linear audio music channels with visual complements, achieved any measurable level of success, as required by Federal Circuit law. For example, Dr. Ugone did not conduct a market share analysis or provide financial or sales data corresponding to MC's linear audio music channels. Accordingly, Dr. Ugone's methodology for determining commercial success, as it relates to obviousness of the '245 patent, is flawed and should be excluded.

II. BACKGROUND

A. Background of this Action

Until recently, linear audio and/or VOD music channels were primarily provided to consumers (hereafter, "subscribers") by multichannel video programming distributors ("MVPDs"), i.e., cable and satellite television companies. (*See* Expert Report of Keith R. Ugone, Ph.D, dated September 27, 2017 ("Report") (Ex. 1), ¶2). In order to do so, an MVPD executes a contract with a music service provider (e.g., MC, Stingray, DMX, XMSirius), where the MVPD agrees to pay the music service provider a monthly rate per subscriber ("subscriber rate") in exchange for one or more music services, including, for example, linear audio and/or VOD music channels, among others. (*See, e.g.,* Report (Ex. 1), ¶¶40-41, 62). The linear audio and/or VOD music channels are then provided by each MVPD to its respective subscribers as part of a larger cable package, which includes several hundred additional television channels. (*Id.*) There is no evidence in the record that any subscriber: (1) has chosen an MVPD based on the music channels offered by the MVPD; or (2) has cancelled his/her subscription based on the music channels offered (or not offered) by the MVPD. (Deposition Transcript of Keith Ugone, Ph.D, dated May 10, 2019 ("Ugone Tr.") (Ex. 2), 117:17-118:6, 159:1-6).

[1] In view of the related IPR proceedings, the parties agree that there are no prior art invalidity arguments remaining with respect to the other two patents-in-suit. Dr. Ugone should, therefore, be precluded from providing any commercial success testimony as to those patents as well.

Typically, each MVPD executes a contract with only one music services provider at a time for a period of several years. (Report (Ex. 1), ¶¶40-41, 62). At the end of the contract, the MVPD can either (1) execute a contract extension with the existing provider, or (2) execute a new contract with another provider. Regardless of whether an MVPD executes a contract extension or a new contract, it is common for subscriber rates to change at the end of each contract. (*See, e.g.,* Report (Ex. 1), ¶¶67-71).

The market for MVPDs, and consequently the music services market, is changing. (Supplemental Rebuttal Expert Report of Michele Riley ("Riley Report") (Ex. 3), ¶¶81-83 (citing www.nasdaq.com/article/cord-cutting-continues-to-impact-pay-tv-services-ott-a-boon-cm834151 (Ex. 20))). Subscribers no longer need to subscribe to an MVPD in order to have access to television programming, including for example, audio and VOD music channels. (*Id.*) Now, subscribers have access to the same programming through a variety of sources, including, for example, Netflix, HBO GO, and Amazon Prime, among others. (*See id.*) Thus, the number of MVPD subscribers is declining each year. (*Id.*)

B. Music Choice and Its Music Services

MC is headquartered in Horsham, Pennsylvania and is owned by several MVPDs, including Cox Communications, Inc., Comcast Corporation, Charter Communications, and Time Warner Inc. (collectively, the "Partner MVPDs"). (Report (Ex. 1), ¶31). [redacted] (Deposition Transcript of Christina Tancredi, dated September 15, 2017 ("Tancredi Tr.") (Ex. 4), 296:21-298:13).

MC launched linear audio music channels in 1994. (Report (Ex. 1), ¶29). Since then, it has offered several audio and VOD music channel services. (*Id.*, ¶¶43-44, Table 4). Not all of MC's services are covered by the patents-in-suit. (*Compare*, Report (Ex. 1), Table 4 to R12-14 to the Russ Invalidity Report (Exs. 5-7). Some of the services offered by MC are its (1) Audio Service; (2) SWRV

Service; and (3) VOD Service. ([redacted]) (Ex. 8) at MC-Stingray00138162-163). MC's Audio Service consists of linear audio music channels (*id.*); its SWRV Service which consists of MC's linear music video networks (*id.*); and its VOD Service which consists of video-on-demand music programming (*id.*). The MVPDs that MC contracts with receive one or more of these services. (*See, e.g., id.*)

C. Stingray and Its Music Services

Stingray is a "world-leading provider" of music services to MVPDs, including Stingray Music (linear audio music), Stingray Music Videos (VOD), Stingray Concerts, and Stingray Karaoke. (www.stingray.com/about-us/who-we-are (Ex. 21)). Stingray's linear audio music channels are provided through its UbiquiCAST system. (Report (Ex. 1), ¶47) Stingray's linear audio music channels include "on screen enhancements," [redacted] (*Id.*, ¶¶48-49). Stingray's linear audio service, [redacted] is a music service that enables an MVPD to stream linear audio music along with an image to subscribers' televisions. (*Id.*, ¶48, Fig. 5). [redacted]. (*Id.*, ¶48; Riley Report (Ex. 3), ¶9). Stingray provides its linear audio service [redacted] to over 300 MVPDs in the United States. (STINGRAY118548 (Ex. 9)). [redacted] (Ugone Tr. (Ex. 2), 163:4-164:19, 168:19-169:14; [redacted].

Stingray also offers MVPDs music video TV channels through [redacted].

(STINGRAY118548 (Ex. 9)). Although Stingray provides at [redacted], [redacted]t (the "Stingray Music TV App"). (*Id.*; Report (Ex. 1), ¶49). Stingray first provided [redacted] with the accused Stingray Music TV App in March 2015. ([redacted](Ex. 11), pp. 1, 9); [redacted] (Ex. 12)). Prior to March 2015, Stingray did not offer or provide any music video TV channels to MVPDs that are accused of infringing the patents-in-suit. (*See id.*; Report (Ex. 1), ¶¶62, 88).

D. The Patents-in-Suit

MC filed this action on June 6, 2016, and thereafter, filed its third amended complaint on March 17, 2017, asserting infringement of five patents. (Dkt. 1, Dkt. 84). After a stay of this action pending IPRs, three patents-in-suit remain: U.S. Patent No. 9,357,245 (the "'245 patent" or the "Visual Complement Patent"), U.S. Patent No. 7,320,025 (the "'025 patent"), and U.S. Patent No. 9,351,045 (the "'045 patent"). (Dkt. 173.) The '245 patent is directed to enhancing the visual display a user sees when tuned to a broadcast music channel on his or her television set with graphics, e.g., album art, relating to the song being played. (*See e.g.*, '245 patent (Dkt. 1-2), 4:54-62.)

The '025 and '045 patents (collectively, the "VOD Linking Patents") are related patents and share a common specification. (*See* '025 patent (Dkt. 1-3); '045 patent (Dkt. 1-4)). The purported invention of the VOD Linking Patents is enabling users to select and watch music videos of their choosing while the music and/or video currently on the screen continues to play. ('025 Patent (Dkt. 1-3, 1:46-56; Report (Ex. 1), ¶42).

E. Dr. Ugone's Damages Reports

Dr. Ugone submitted a damages report on September 27, 2017 ("Report") (Ex. 1), and a post-stay supplemental report on April 12, 2019 ("Supplemental Report") (Ex. 13). In the Report, Dr. Ugone

concluded that MC suffered (1) lost profits due to Stingray's alleged infringement of both the Visual Complement Patent and the VOD Linking Patents; and (2) price erosion due to Stingray's alleged infringement of the VOD Linking Patents.[2] (Report (Ex. 1), Table 2; Ugone Tr. (Ex. 2), 70:13-24). Dr. Ugone did not provide a calculation for any reasonable royalty damages. (*See, generally, Id.*) In the Supplemental Report, Dr. Ugone updated the damages calculations, but his methodologies did not change. (Supplemental Report (Ex. 13), Table 2, ¶¶4-17).

F. Dr. Ugone's Report On Commercial Success

In addition, Dr. Ugone prepared a report on commercial success in support of MC's position that the patents-in-suit are non-obvious. (("Commercial Success Report") (Ex. 14), Ugone Tr. (Ex. 2), 149:9-25). Despite not providing a market share analysis, let alone any evidence of the success of MC's linear audio music channels (*See* Commercial Success Report (Ex. 14), ¶¶37-45; Ugone Tr. (Ex. 2), 121:10-19, 253:4-16), Dr. Ugone concluded that [redacted] (Commercial Success Report (Ex. 14), ¶37).

III. ARGUMENT

A. Legal Standard

An expert witness may provide opinion testimony if "(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the facts of the case." Fed. R. Evid. 702; *see also Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 149 (1999); *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 592-93 (1993). "Rule 702 demands that expert

[2] At that time, there were three VOD Linking Patents in suit—[redacted] (Report (Ex. 1), ¶11, Table 2; Ugone Tr. (Ex. 2), 75:22-25.)

testimony related to scientific, technical or other specialized knowledge, which does not include unsubstantiated speculation and subjective beliefs." *SynQor, Inc. v. Artesyn Techs., Inc.*, No. 2:07-cv-497-TJW-CE, 2010 U.S. Dist. LEXIS 144244 (Dec. 13, 2010 E.D. Tex.). "The reliability analysis applies to all aspects of an expert's testimony: the methodology, the facts underlying the expert's opinion, and the link between the facts and the conclusion." *Knight v. Kirby Inland Marine, Inc.,* 482 F.3d 347, 355 (5th Cir. 2007). Although the Fifth Circuit and other courts have identified various factors that the district court may consider in determining whether an expert's testimony should be admitted, the nature of the factors that are appropriate for the court to consider is dictated by the ultimate inquiry – whether the expert's testimony is sufficiently reliable and relevant to be helpful to the finder of fact and thus warrant admission at trial. *U.S. v. Valencia*, 600 F.3d 389, 424 (5th Cir. 2010).

B. Dr. Ugone's Opinions With Respect To Lost Profits Should Be Excluded

Dr. Ugone opines that MC should be awarded [redacted] in lost profits for infringement of the Visual Complement Patent and [redacted] in lost profits for infringement of the VOD Linking Patents. (Supplemental Report (Ex. 13), Table 2.) "To recover lost profits, the patentee bears the burden of proof to show a reasonable probability that but for infringement, it would have made the sales that were made by the infringer." *Presido Components, Inc. v. Am. Techn. Ceramics Corp.*, 875 F.3d 1369, 1380 (Fed. Cir. 2017) (citations omitted). "But-for causation can be proven using the test given in *Panduit Corp. v. Stahlin Bros. Fibre Works, Inc.,* 575 F.2d 1152 (6th Cir. 1078)." *Id.* "The four-factor *Panduit* test requires the patentee to show: (1) demand for the patented product; (2) an absence of acceptable, noninfringing substitutes; (3) manufacturing and marketing capability to exploit the demand; and (4) the amount of profit that would have been made." *Id.* (citing *Panduit*, 575 F.2d at 1156). However, Dr. Ugone's application of *Panduit* factors to the facts of this case is unreliable, and

therefore, Dr. Ugone's lost profits opinions should be excluded.

1. Dr. Ugone Incorrectly Applied *Panduit* Factor 2 In Calculating Lost Profits With Respect To The Visual Complement Patent

Dr. Ugone does not dispute that the second *Panduit* factor is the "absence of acceptable, noninfringing substitutes." *Presido*, 875 F.3d at 1380; Report (Ex. 1), n. 92. Nonetheless, in providing his opinions, Dr. Ugone characterizes the second *Panduit* factor differently, namely, as whether [redacted] (Report (Ex. 1), ¶53). While Dr. Ugone alleges that [redacted] (*id.*, n. 92), Dr. Ugone did not perform this analysis with respect to MC's purported lost profits resulting from Stingray providing [redacted].

Dr. Ugone understands that the Visual Complement Patent teaches, *inter alia*, "providing on-screen visual complements, such as album art or artist images associated with the song that is playing . . . within linear [audio] music channels." (Report (Ex. 1), ¶42.b). Dr. Ugone further understands that [redacted]. (Report (Ex. 1), ¶¶47-49). Nonetheless, Dr. Ugone opines that [redacted] is not an acceptable non-infringing substitute because of "the importance of the features and benefits enabled by the Visual Complement Patent." (Supplemental Report, (Ex. 13) ¶22.a.). But this is not the correct methodology for determining whether acceptable non-infringing alternatives exist under *Panduit*. Rather, "[t]he correct inquiry under *Panduit* is whether a non-infringing alternative would be acceptable compared to the ***patent owner's product*** . . ." *Presido*, 875 F.3d at 1381 (emphasis added). Dr. Ugone did not determine whether Stingray's [redacted] is an acceptable non-infringing alternative ***as compared to MC's linear audio music channels***. Had he done this analysis, he would have determined that it is. (*See* Ugone Tr.

(Ex. 2), 163:4-164:18). Indeed, Dr. Ugone does not dispute that [redacted]. (Ugone Tr. (Ex. 2), 163:4-164:19). [redacted] (*Id.*)

Accordingly, Dr. Ugone's determination that MC should be awarded lost profits for Stingray's alleged infringement of the Visual Complement Patent is flawed and unreliable, and his opinions with respect to that determination should be excluded. *See Spellbound Dev. Group Inc. v. Pac. Handy Cutter Inc.*, 2012 U.S. Dist LEXIS 188907 at *3 (C.D. Cal. Feb. 24, 2012) (excluding expert's damages calculation because the expert, *inter alia*, provided no basis for his conclusion that there were no acceptable non-infringing alternatives).

2. Dr. Ugone's Calculation Of Lost Profits With Respect To The VOD Linking Patents Is Speculative And Unreliable

Dr. Ugone's lost profits analysis relating to the VOD Linking Patents is based on an assumption that is speculative and flawed and, as such, should be excluded. Dr. Ugone determined that [redacted] as a result of Stingray's alleged infringement of the VOD Linking Patents and calculated that MC lost over [redacted] as a result. (Supplemental Report (Ex. 13), Table 2). Dr. Ugone's calculation is based on the assumption that [redacted]. (Report (Ex. 1), ¶¶80-83; Supplemental Report (Ex. 13), ¶8; Ex. 7 to Supplemental Report ("[redacted] Lost Profits Calculation") (Ex. 15)). But Dr. Ugone provides no basis for his assumption.

During his deposition, Dr. Ugone explained that he chose the monthly subscriber rate of [redacted] simply because it was the agreed upon monthly rate in [redacted] contract with MC prior to [redacted] contract with Stingray. (Ugone Tr. (Ex. 2), 179:9-180:25). However, Dr. Ugone failed to consider and/or discuss the plethora of evidence demonstrating that monthly subscriber rates for music

services purportedly covered by the VOD Linking Patents varies, including that: [redacted] (Ex. 16) at MC-Stingray00347118, MC-Stingray00347187; Report (Ex. 1), Table 4). Tellingly, when questioned at his deposition, Dr. Ugone could not explain the discrepancy between this evidence and his assumed [redacted] monthly subscriber rate. (Ugone Tr. (Ex. 2), 182:5-186:23).

The speculative nature of Dr. Ugone's assumption is further compounded by the fact that there is no evidence that [redacted] for a music service covered by the VOD Linking Patents, including during the damages period.[3] *See O2 Micro Int'l Ltd. v. Beyond Innovation Tech.*, 2005 U.S. Dist LEXIS 47075 (E.D. Tex. Dec. 15, 2005) (damages expert's report lacked sufficient analysis, where price was 4-times higher than any price for competing products during the damages period). Importantly, Dr. Ugone's assumed monthly subscriber rate of [redacted] (Ex. 17) at MC-Stingray00138355). Indeed, the [redacted]:

[redacted]

[3] The damages period for the VOD Linking Patents is March 2015 to August 2019. (Ugone Tr. 75:11-17.)

[redacted]

(*Id.*) (emphasis added). But Dr. Ugone did not even attempt to determine the amount of the [redacted]

Moreover, Dr. Ugone's assumption that the monthly subscriber rate will remain unchanged contradicts his assumption regarding price erosion that [redacted]. (Ugone Tr. (Ex. 2), 194:19-195:16) For example, MC's Chief Operating Officer, Ms. Christina Tancredi, testified that [redacted]. (Tancredi Tr. (Ex. 4), 296:21-298:13). Dr. Ugone was aware of this testimony (Ex. 3 to Supplemental Report ("Supplemental Information Considered") (Ex. 18), p. 1), but did not explain why [redacted]. That Dr. Ugone only assumed that [redacted] in the context of price erosion damages, but not lost profits damages, speaks to the unreliability of Dr. Ugone's damages calculation.

Finally, that Dr. Ugone's assumed monthly subscriber rate is speculative is further supported by the fact that Dr. Ugone's damages reports are devoid of any discussion regarding price elasticity including, for example, the effect that lower MVPD subscriber counts may have on [redacted] willingness to continue paying a monthly subscriber rate of [redacted]. (Ugone Tr. (Ex. 2), 181:9-15); *see also Crystal Semiconductor Corp. v. TriTech Microelectronics Int'l, Inc.*, 246 F.3d 1336, 1359-60 (Fed. Cir. 2001) (excluding jury award for lost profits and price erosion damages because, *inter alia*, "the record does not contain sufficient evidence to show the reaction of the market if, 'but for' infringement, plaintiff would have tried to charge more" for its product). Dr. Ugone acknowledged that [redacted] subscriber count is decreasing each year (*see, e.g.,* [redacted] (Ex.

15)). Nonetheless, Dr. Ugone did not explain why, in the face of decreasing subscribers, [redacted] would be willing to pay MC a monthly subscriber rate that is [redacted] than what it agreed to pay Stingray for a similar type of music service.

Dr. Ugone's calculation of the lost profits suffered by MC due to Stingray's alleged infringement of the VOD Linking Patents is based on a speculative assumption, and, therefore, his opinions as to these damages should be excluded. *See Moore v. Int'l Paint, LLC*, 547 Fed.Appx. 513, 516 (5th Cir. 2013) (excluding expert's testimony because he "made a number of . . . assumptions that, while not strictly inconsistent with the evidence, had no basis in the record").

C. Dr. Ugone's Opinions With Respect To Price Erosion Should Be Excluded As Flawed, Speculative, And Unreliable

"To prove price erosion damages, a plaintiff must show that 'but for' infringement, it would have sold its product at higher prices." *Engineered Prod. Co. v. Donaldson Co., Inc.*, 147 Fed.Appx. 979, 990 (Fed. Cir. 2005) (citations omitted). "[T]he patentee's price erosion theory must account for the nature, or definition of the market, similarities between any benchmark market and the market in which price erosion is alleged, and the effect of the hypothetically increased price on the likely number of sales at that price in the market." *Crystal Semiconductor*, 246 F.3d at 1357. Where an expert's "finding of causation" for price erosion damages "is not adequately supported by the record," his opinions should be excluded. *Spellbound*, 2012 U.S. Dist. LEXIS 188907, at *3.

Dr. Ugone's price erosion opinions are flawed, speculative, and unreliable. Dr. Ugone contends that MC has suffered [redacted], collectively, in price erosion from [redacted] MVPDs with whom MC entered into agreements to provide music services. (Supplemental Report (Ex. 13), Table 4; *see also* Ex. 8 to Supplemental Report ("Cited Price Erosion Evidence") (Ex. 19)). For each of these MVPDs, [redacted]. (*See generally* Cited Price Erosion Evidence (Ex. 19)). Dr. Ugone opined that the [redacted]

[redacted] is solely due to Stingray's alleged infringement. (Ugone Tr. (Ex. 2), 210:24-211:6). However, Dr. Ugone's damages reports are devoid of any discussion and/or consideration of the many other possible reasons for the lower monthly subscriber rates.

First, Dr. Ugone did not take into account whether any of Stingray's ***non-infringing music services*** caused the MVPDs to lower the monthly subscriber rates. (Ugone Tr. (Ex. 2), 199:5-11). This is problematic given Dr. Ugone's admissions that: [redacted] (Ugone Tr. (Ex. 2), 198:3-6; 200:13-201:14). On this basis, alone, Dr. Ugone's price erosion opinions should be excluded. *See Spellbound*, 2012 U.S. Dist. LEXIS 188907, at *3-4 (excluding expert's calculation of price erosion because it was "based on a finding that there were no acceptable non-infringing substitutes," but "[t]he expert [did] not appear to discuss the basis for this conclusion").

In addition, Dr. Ugone did not consider and/or provide opinions regarding several other factors that may have caused the monthly subscriber rates to drop, including, for example [redacted] (*id.*, 209:2-210:23)[4]. (*See also* Report (Ex.

[4] Indeed, for at least some of the [redacted] MVPDs, Music Choice did not provide [redacted]. (*See, e.g.*, Music Choice Affiliation Agreement with [redacted], (Ex. 22), p. 1 [redacted]) (emphasis added)).

1), ¶¶84-93; Supplemental Report, (Ex. 13), ¶¶12-17). Accordingly. Dr. Ugone's price erosion opinions should be excluded. *See Ericsson, Inc. v. Harris Corp.*, 2001 U.S. Dist. LEXIS 26485, at *22 (E.D. Tex. Mar. 13, 2001) (excluding damages expert's testimony because, *inter alia*, he did not, "in his analysis, sufficiently take[] into consideration all of the many other factors that could cause a manufacturer of a product to lower prices, which undermines the reliability of his conclusion").

Finally, Dr. Ugone's price erosion opinions should be excluded because they are based on the flawed assumption that price erosion can result from agreements with MVPDs to whom Stingray did ***not*** even offer the allegedly infringing Stingray Music TV App. (Ugone Tr. (Ex. 2), 194:19-195:16). [redacted]. (Cited Price Erosion Evidence (Ex. 19), pp. 9-10, 23-25). Nonetheless, Dr. Ugone opines that MC could have suffered price erosion based on the assumption that these MVPDs are [redacted] (Ugone Tr. (Ex. 2),196:7-197:3). But Dr. Ugone cites no documentary evidence supporting this assumption. Accordingly, Dr. Ugone's assumption is speculative, and his opinions related thereto should be excluded. *See Engineered Prod.*, 147 Fed.Appx. at 990 (excluding price erosion damages because the evidence that plaintiff's customer was aware of defendant's bid to a third party was "too speculative to support the necessary inference" that plaintiff's customer knew of the bid).

D. Dr. Ugone's Opinions With Respect To Commercial Success Should Be Excluded As Unreliable And Based On A Flawed Methodology

In support of MC's claim that the Visual Complement Patent is not obvious, Dr. Ugone offered opinions that MC's linear audio music channels are commercially successful. (Commercial Success Report (Ex. 14), ¶¶37-49). "Evidence of commercial success . . . requires a patentee to establish [a] nexus between the claimed invention and the commercial success of a product or method."

Datatreasury Corp. v. Wells Fargo & Co., No. 2:06-cv072, 2010 U.S. Dist. LEXIS 150694, at *54 (Feb. 25, 2010 E.D. Tex.) "A prima facie case of nexus is generally made out when the patentee shows both that there is commercial success, and that the thing (product or method) that is commercially successful is the invention disclosed and claimed in the patent." *Id.* at *54-55. Dr. Ugone identifies MC's linear audio music channels as the service/product covered by the Visual Complement Patent (Commercial Success Report (Ex. 14), ¶41), but he does not determine that the linear audio music channels are commercially successful in accordance with Federal Circuit law.

Dr. Ugone cites to no evidence purportedly demonstrating the success of MC's linear audio music channels, themselves. Rather, Dr. Ugone cites to [redacted]. (Commercial Success Report (Ex. 14) ¶¶39-40). Without evidence of success of MC's linear audio music channels, Dr. Ugone cannot possibly opine that any success is attributed to the features of the Visual Complement Patent and, as such, Dr. Ugone's testimony should be excluded. *See Datatreasury*, 2010 U.S. Dist. LEXIS 150694, at *55-56 (excluding expert's testimony of commercial success because he did not have a reliable basis to demonstrate nexus).[5]

IV. CONCLUSION

In view of the foregoing, Stingray respectfully requests that the court grant its *Daubert* motion to exclude certain testimony and opinions of Dr. Ugone.

[5] To the extent Music Choice contends that "high viewership" or "popularity" (Commercial Success Report (Ex. 14), ¶¶41-45) is akin to commercial success, it is not. *Datatreasury*, 2010 U.S. Dist. LEXIS 150694, at *61 ("use does not necessarily indicate commercial success of the claimed invention because what is claimed may not necessarily drive what is sold or what is commercially successful").

Dated: May 31, 2019

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

On May 31, 2019, Julie Bookbinder and Elana Araj, counsel for Defendants, conferred with Robert Rhoad, counsel for Plaintiff, as required by Local Rule 7(h). Counsel for Plaintiff confirmed that Plaintiff opposes this motion. Discussions conclusively ended at an impasse, leaving an open issue for the Court to resolve.

/s/ Joshua L. Raskin
Joshua L. Raskin

CERTIFICATE OF SERVICE

The undersigned certifies that on this 31st day of May 2019, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document by electronic mail under Local Rule CV-5(d).

/s/ Joshua L. Raskin
Joshua L. Raskin

CERTIFICATE OF AUTHORIZATION TO FILE UNDER SEAL

Pursuant to Local Rule 5(a)(7)(A), the undersigned hereby certifies that the corresponding documents were filed under seal pursuant to the Court's First Amended Stipulated Protective Order (Dkt. No. 132).

/s/ Joshua L. Raskin
Joshua L. Raskin

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

MUSIC CHOICE,	)	
	)	
Plaintiff,	)	
	)	**C.A. No. 2:16-CV-0586-JRG-RSP**
v.	)	
	)	
STINGRAY DIGITAL GROUP INC.	)	**Jury Trial Demanded**
	)	
Defendant.	)	
	)	

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Music Choice, by its undersigned counsel, with knowledge as to its own acts and status, and upon information and belief as to the acts and status of others, for its First Amended Complaint against defendant Stingray Digital Group Inc. ("Stingray"), alleges as follows:

PRELIMINARY STATEMENT

1. This is an action for patent infringement under the United States patent laws, 35 U.S. C. § 1, *et seq*. The accused instrumentalities include the Stingray Music products and services ("Stingray Music System/Method") that provides digital audio music channels and music videos on demand through cable operator, satellite, and/or Internet Protocol (IP) television platforms, and is used, sold and/or offered for sale in, and/or imported into, the United States, in the State of Texas, and in this judicial district, by defendant Stingray. By way of example, the Stingray Music System/Method infringes at least claims 1 and 8 of U.S. Patent No. 8,769,602; claims 1, 12 and 17 of U.S. Patent No. 9,357,245; claims 1 and 8 of U.S. Patent No. 7,320,025; claims 1, 6, 11, and 16 of U.S. Patent No. 9,351,045; and claims 1, 6, and 14 of U.S. Patent No.

9,414,121, which patents are owned for all purposes by Plaintiff Music Choice (collectively, the "Patents-in-Suit").

THE PARTIES

2. Plaintiff Music Choice is a Pennsylvania general partnership, and has its principal place of business at 650 Dresher Road, Horsham, PA 19044. Music Choice is doing business in this judicial district.

3. Music Choice is a pioneer in the digital music field. In 1991, the founders of Music Choice launched one of the first digital audio services in the World. Since that time, Music Choice has significantly expanded its programming services, and today provides a multi-platform music network. Music Choice has been, and continues to be, a leading innovator of the technology enabling the programming, production and distribution of video and audio music content for digital cable, satellite and IP television, broadband (PCs) and mobile devices.

4. Music Choice's products and services currently include 75 commercial interruption free audio music channels, 25 music video channels and single-play video on demand (VOD) content. Music Choice's music channels and VOD content are among the most listened to and watched in the United States. These products and services are available on a linear and/or "TV Everywhere" basis. Music Choice currently has approximately 47.2 million monthly listeners averaging 28.2 hours per week, and in 2015 Music Choice's videos were the most watched free VOD content. Music Choice's VOD views represent 10% of all VOD views in participating networks.

5. Music Choice has spent considerable time, effort, and money over the years building its business in audio music channels, music video channels, video on demand services,

and TV Everywhere services, developing and deploying proprietary digital audio and VOD technology, and protecting that technology by pursuing and securing patent rights.

6. Defendant Stingray Digital Group Inc. ("Stingray") is a Canadian corporation with its principal place of business at 730 Wellington Street, Montreal, Quebec, Canada H3C 1T4. Stingray currently has over 250 employees across the world. Stingray is doing business in the United States, in the State of Texas, and in this judicial district.

JURISDICTION AND VENUE

7. This is a civil action for patent infringement arising under the patent laws, 35 U.S.C. §§ 1 *et seq.* This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

8. Stingray has solicited business in the State of Texas, transacted business within the State of Texas, and attempted to derive financial benefit from residents of the State of Texas, including benefits directly related to the instant patent infringement cause of action set forth herein.

9. Stingray has placed its infringing Stingray Music System into the stream of commerce, and practiced its infringing Stingray Music Method, throughout the United States with the expectation that they will be used in this judicial district, which systems and methods have been used in this judicial district.

10. Stingray is subject to personal jurisdiction in this judicial district because it is present within, has minimum contacts with, and regularly conducts business in the State of Texas and the Eastern District of Texas. Music Choice's cause of action arises directly from Stingray's business contacts and other activities in the State of Texas and in this judicial district.

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

12. The Stingray Music System/Method has been, and continues to be, used and distributed by Stingray in the Eastern District of Texas. More specifically, Stingray, directly and/or through its agents and intermediaries, has placed the Stingray Music System/Method into the stream of commerce throughout the United States through established channels, including multichannel video programming distributors (MVPDs), with the expectation and/or knowledge that the Stingray Music System/Method will be used, sold, and offered for sale in, and/or imported into, the State of Texas and in this judicial district.

13. Without limiting the foregoing, Stingray provides the Stingray Music System/Method to MVPDs and subscribers/end users in this judicial district with Stingray's UbiquiCAST distributed broadcast architecture, including UbiquiCAST servers that are set-up and configured to each MVPD's specific requirements. These configured UbiquiCAST servers are shipped to MVPD headends, where they are installed and are used by Stingray to provide the Stingray Music System/Method to MVPDs and to subscribers/end users through receivers in this judicial district in conjunction with delivered audio and video programming services. For example, Stingray's UbiquiCAST servers are installed at AT&T's headends located in Texas and provide the Stingray Music System/Method via AT&T's U-Verse® TV services to subscribers/end users through receivers in this judicial district. Stingray uploads new content and program scheduling data for the Stingray Music System/Method by a secure virtual private network link to its UbiquiCAST servers located in Texas. Such updates are automatic, and the management of the UbiquiCAST servers located in Texas is remotely controlled by Stingray. Stingray further provides twenty-four hour, seven days a week help and support for its UbiquiCAST servers located in Texas.

THE PATENTS-IN-SUIT

14. U.S. Patent No. 8,769,602 ("the '602 Patent"), entitled "System And Method For Providing An Interactive, Visual Complement To An Audio Program," was duly and lawfully issued by the U.S. Patent and Trademark Office on July 1, 2014. A true and correct copy of the '602 Patent is attached as Exhibit A.

15. The '602 Patent lists David J. Del Beccaro, Stuart H. Farber, Kelley L. Giannetti, Donna M. O'Neill, Jeremy C. Rosenberg, Robert M. Steinberg, Christina B. Tancredi, and Ronald M. Yurman as inventors.

16. Music Choice is the owner of the '602 Patent by valid assignment from the inventors. Music Choice owns all rights, title, and interest in the '602 Patent, including the right to sue for and recover all past, present, and future damages for infringement of the '602 Patent.

17. The Abstract of the '602 Patent provides as follows:

> A system and method for providing an interactive, visual complement to one or more audio programs. In one aspect, the system comprises an audio subsystem for generating an audio signal corresponding to a sound recording. The system also comprises a video subsystem for generating a video image specification based, at least in part, on the sound recording. In one aspect, the audio signal and video image specification are transmitted to an audio/video signal transmission system. The transmission system receives the video image specification and generates a video signal that conforms to the video image specification. The video signal and the audio signal are transmitted to at least one consumer receiver. In this way, the system provides a visual complement to an audio program.

18. U.S. Patent No. 9,357,245 (the "'245 Patent"), entitled "System And Method For Providing An Interactive, Visual Complement To An Audio Program," was duly and lawfully issued by the U.S. Patent and Trademark Office on May 31, 2016. A true and correct copy of the '245 Patent is attached as Exhibit B.

19. The ’245 Patent lists David J. DelBeccaro, Stuart H. Farber, Kelley L. Giannetti, Donna M. O’Neill, Jeremy C. Rosenberg, Robert M. Steinberg, Christina B. Tancredi, and Ronald M. Yurman as inventors.

20. Music Choice is the owner of the ’245 Patent by valid assignment from the inventors. Music Choice owns all rights, title, and interest in the ’245 Patent, including the right to sue for and recover all past, present, and future damages for infringement of the ’245 Patent.

21. The Abstract of the ’245 Patent provides as follows:

> A system and method for providing an interactive, visual complement to one or more audio programs. In one aspect, the system comprises an audio subsystem for generating an audio signal corresponding to a sound recording. The system also comprises a video subsystem for generating a video image specification based, at least in part, on the sound recording. In one aspect, the audio signal and video image specification are transmitted to an audio/video signal transmission system. The transmission system receives the video image specification and generates a video signal that conforms to the video image specification. The video signal and the audio signal are transmitted to at least one consumer receiver. In this way, the system provides a visual complement to an audio program.

22. U.S. Patent No. 7,320,025 (“the ’025 Patent”), entitled “Systems And Methods For Providing A Broadcast Entertainment Service And An On-Demand Entertainment Service,” was duly and lawfully issued by the U.S. Patent and Trademark Office on January 15, 2008. A true and correct copy of the ’025 Patent is attached as Exhibit C.

23. The ’025 Patent lists Robert M. Steinberg, Ronald M. Yurman, Jeremy C. Rosenberg, Daniel L. McGonigal, John Feras, David J. DelBeccaro, and Stuart H. Farber as inventors.

24. Music Choice is the owner of the ’025 Patent by valid assignment from the inventors. Music Choice owns all rights, title, and interest in the ’025 Patent, including the right to sue for and recover all past, present, and future damages for infringement of the ’025 Patent.

25. The Abstract of the ’025 Patent provides as follows: “The present invention provides systems and methods for, in some cases, supplementing a broadcast media service with an on-demand and personalized media service.”

26. U.S. Patent No. 9,351,045 (the “’045 Patent”), entitled “Systems And Methods For Providing A Broadcast Entertainment Service And An On-Demand Entertainment Service,” was duly and lawfully issued by the U.S. Patent and Trademark Office on May 24, 2016. A true and correct copy of the ’045 Patent is attached as Exhibit D.

27. The ’045 Patent lists Robert M. Steinberg, Ronald M. Yurman, Jeremy C. Rosenberg, Daniel L. McGonigal, John Feras, David J. DelBeccaro, and Stuart H. Farber as inventors.

28. Music Choice is the owner of the ’045 Patent by valid assignment from the inventors. Music Choice owns all rights, title, and interest in the ’045 Patent, including the right to sue for and recover all past, present, and future damages for infringement of the ’045 Patent.

29. The Abstract of the ’045 Patent provides as follows: “The present invention provides systems and methods for, in some cases, supplementing a broadcast media service with an on-demand and personalized media service.”

30. U.S. Patent No. 9,414,121 (“the ’121 Patent”), entitled “Systems And Methods For Providing An On-Demand Entertainment Service,” was duly and lawfully issued by the U.S. Patent and Trademark Office on August 9, 2016. A true and correct copy of the ’121 Patent is attached as Exhibit E.

31. The ’121 Patent lists Stuart H. Farber, Ronald M. Yurman, Jeremy C. Rosenberg, Robert M. Steinberg, John J. Feras Jr., Daniel L. McGonigal, Donna M. O’Neill, Christina B. Tancredi, and David J. Del Beccaro as inventors.

32. Music Choice is the owner of the '121 Patent by valid assignment from the inventors. Music Choice owns all rights, title, and interest in the '121 Patent, including the right to sue for and recover all past, present, and future damages for infringement of the '121 Patent.

33. The Abstract of the '121 Patent provides as follows: "The present invention provides systems and methods for, in some cases, supplementing a broadcast media service with an on-demand service."

STINGRAY'S INFRINGING CONDUCT

34. Stingray owns, operates, and is otherwise responsible for the Stingray Music System/Method, that provides digital audio music channels and music videos on demand through cable operator, satellite, and/or Internet Protocol television platforms, such as AT&T's U-Verse® service. The accused Stingray Music System/Method is used, sold and/or offered for sale in the United States, and/or imported into the United States, by defendant Stingray.

35. Beginning in 2006, Music Choice established a relationship with AT&T to provide Music Choice products and services on the AT&T U-Verse® service. The first agreement with AT&T concluded in 2007. During the period from fall 2010 through early 2011, Music Choice and AT&T negotiated a new agreement for AT&T's carriage of Music Choice's products and services on the AT&T U-Verse® service through December 2013, which agreement was subsequently renewed/extended.

36. In the 2010-2011 time period, Music Choice became aware that Stingray was trying to displace Music Choice as the provider of digital audio music channels and music videos on demand on AT&T's U-Verse® service. At that time, it appeared that the Stingray product offering was an inferior product that lacked the enhanced functionality enabled by technology

designed, developed, and patented by Music Choice. While Music Choice was successful in gaining AT&T's business, as a consequence of the very aggressive pricing offered by Stingray to AT&T, Music Choice was forced to lower its subscriber rates and to enter into a short term agreement. Music Choice sought to negotiate a longer term arrangement with AT&T to extend beyond December 2013, but was not able to reach agreement with AT&T on terms, and only executed two renewals to extend the term of the current agreement through first, February 28, 2014, and then subsequently through February 28, 2015.

37. Prior to the December 2013 contract expiration with AT&T and subsequent extension, Stingray expressed an interest in acquiring Music Choice. In 2010, Music Choice learned that Stingray was focused on entering the U.S. market. Stingray's expansion plans appeared, initially, to involve acquisition of an already going concern in the U.S. that would provide Stingray with access to an existing music service and the technology, rights, affiliates and subscribers necessary to penetrate and operate in the U.S. market. Throughout the period from 2011 to 2015, Stingray had repeated contacts with Music Choice, as well as with Music Choice's partners, and MVPDs and affiliates that Music Choice had contracts with, about its interest in acquiring Music Choice.

38. As part of its expressions of interest to acquire Music Choice, Stingray repeatedly sought access to Music Choice's confidential business and financial information, including its agreements with MVPDs and affiliates, Music Choice's proprietary technology, and its portfolio of issued patents and pending applications. In May 2013, Stingray and Music Choice executed a Confidentiality Agreement, as well as a subsequent letter agreement in June 2013, pursuant to which Stingray was provided access to much of the documentation and information it sought. In addition to reviewing Music Choice's confidential documents, Stingray personnel and their

representatives inspected Music Choice's facilities in Horsham, Pennsylvania and in New York City, and conducted interviews of Music Choice personnel.

39. After having access to Music Choice's confidential and proprietary technical documents and information, business and financial documents and information, and issued patents and pending applications, Stingray, in the fall of 2014, launched, as part of AT&T's U-Verse® services, an improved digital audio music and video on demand system and service that included the features and functionality infringing Music Choice's patents – features and functionality that Music Choice had not previously observed in Stingray's product offering prior to Stingray's access to the information it obtained from Music Choice.

40. In October 2014, Music Choice was informed that AT&T was eliminating Music Choice on AT&T's U-Verse® service effective March 1, 2015, and that Music Choice's service would effectively be replaced with the infringing Stingray Music System/Method carried by AT&T.

41. In addition to the infringing Stingray Music System/Method provided on the AT&T U-Verse® service, Stingray announced, in May 2016, that it will expand its partnership with Comcast to also provide the Stingray Music System/Method to Comcast Xfinity customers. In connection with the announcement, the senior vice president of marketing and communications for Stingray told Multichannel News that "[t]he ability to curate playlists or access already created playlists on your large screen in your living room is an [*sic*] much better experience compared to digital." *See*, R. Thomas Umstead, "Stingray Expands Deal with Comcast," Multichannel News (May 2, 2016), available at http://www.multichannel.com/news/content/stingray-strikes-music-chord-comcast/404616. As explained in further detail below, this functionality, touted by Stingray as providing a "much

better experience," is believed to be part of the technology developed by Music Choice disclosed and claimed in the Patents-in-Suit.

42. Stingray provides the Stingray Music System/Method to MVPDs and subscribers/end users with Stingray's UbiquiCAST distributed broadcast architecture, including UbiquiCAST servers that are set-up and configured to each MVPD's specific requirements. These configured UbiquiCAST servers are shipped to MVPD headends, where they are installed and are used by Stingray to provide the Stingray Music System/Method to MVPDs and to subscribers/end users through receivers in conjunction with delivered audio and video programming services. For example, Stingray's UbiquiCAST servers are installed at AT&T's headends and provide the Stingray Music System/Method via AT&T's U-Verse® TV services to subscribers/end users through receivers. Stingray uploads new content and program scheduling data for the Stingray Music System/Method by a secure virtual private network link to its UbiquiCAST servers. Such updates are automatic, and the management of the UbiquiCAST servers is remotely controlled by Stingray. Stingray further provides twenty-four hour, seven days a week help and support for its UbiquiCAST servers.

43. Stingray has contractual relationships with partner MVPDs, such as, for example, AT&T, regarding the operation and use of the Stingray Music System/Method. Through these contractual relationships, Stingray and its partner MVPDs form a joint enterprise in provisioning and/or performing the Stingray Music System/Method to which Stingray has at least an equal voice. Moreover, through these contractual relationships, Stingray controls the manner and timing of an MVPD's provisioning or performance of the Stingray Music System/Method, and conditions an MVPD's receipt of benefits or participation in the Stingray Music System/Method

by configuring, installing, and programming Stingray's UbiquiCAST servers at MVPD headends.

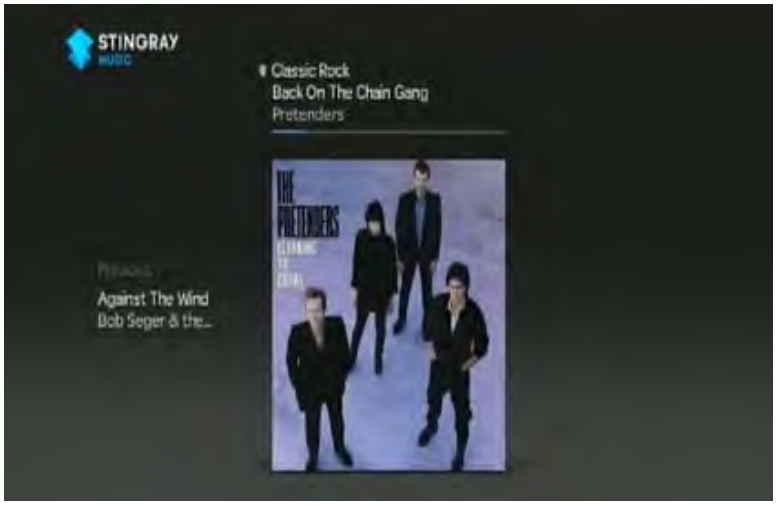
44. The Stingray Music System/Method infringes, literally and/or under the doctrine of equivalents, at least claims 1 and 8 of the '602 Patent; claims 1, 12 and 17 of the '245 Patent; claims 1 and 8 of the '025 Patent; claims 1, 6, 11, and 16 of the '045 Patent; and claims 1, 6, and 14 of the '121 Patent, as explained in detail below.

45. Stingray has and continues to use, sell and/or offer for sale in the United States, and/or import into the United States, the infringing Stingray Music System/Method despite an objectively high likelihood that its actions constituted infringement of one or more the Patents-in-Suit. This objectively-defined risk of infringement was known or so obvious that it should have been known to Stingray.

U.S. Patent No. 8,769,602

46. Stingray has used and continues to use the Stingray Music Method in a manner that infringes, literally and/or under the doctrine of equivalents, at least claim 1 of the '602 Patent. Specifically, through the Stingray Music Method, Stingray directly, and/or in conjunction with one or more intermediaries or agents, performs a method of providing a visual complement to an audio stream (*e.g.*, the Stingray music app on AT&T's U-Verse® platform provides a song title, artist name, and/or album cover image as a visual complement to a song).





47. The Stingray Music Method transmits, from a first transmission system (*e.g.*, the Stingray UbiquiCAST music content origin server) to a second transmission system (*e.g.*, the AT&T U-Verse® system), audio data corresponding to a sound recording (*e.g.*, audio data corresponding to the sound recording "Back on the Chain Gang").

48. The Stingray Music Method transmits a data packet (*e.g.*, an HTML or XML document) including a video image specification (*e.g.*, a specification of a thumbnail cover art image to be displayed in a video image associated with the sound recording "Back on the Chain Gang") while the audio data (*e.g.*, audio data corresponding to the sound recording "Back on the

Chain Gang") is being transmitted, wherein the video image specification specifies one or more media asset identifiers, each of which identifies one or more media assets, one or more of the media asset identifiers identifying a media asset associated with the sound recording (*e.g.*, an identifier of a thumbnail cover art image), the data packet further including sound recording information associated with the sound recording, the sound recording information including one or more of the title of the sound recording (*e.g.*, "Back on the Chain Gang") and the name of the artist who recorded the sound recording (*e.g.*, the "Pretenders").

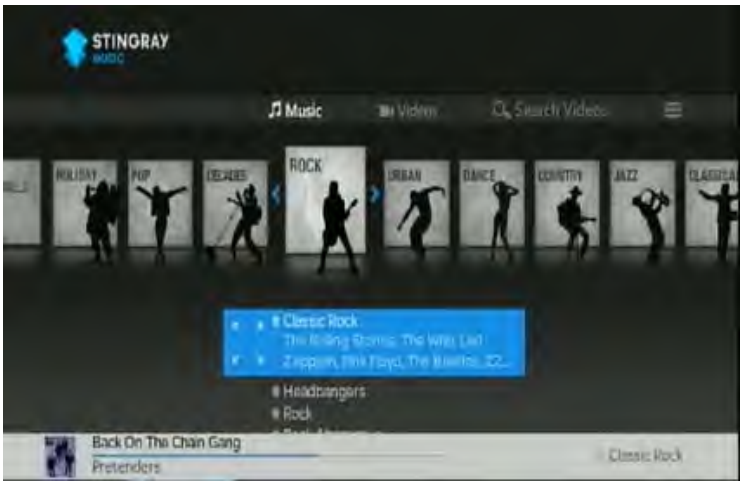
49. The Stingray Music Method transmits the data packet (*e.g.*, the HTML or XML document) to a system (*e.g.*, a device running the Stingray music app) including a video image generator, wherein the video image generator is configured to generate a video image (*e.g.*, a video image including the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image) using the video image specification and the system is configured to provide the generated video image (*e.g.*, the video image including the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image) to a device that is operable to display the video image to a user of the device.

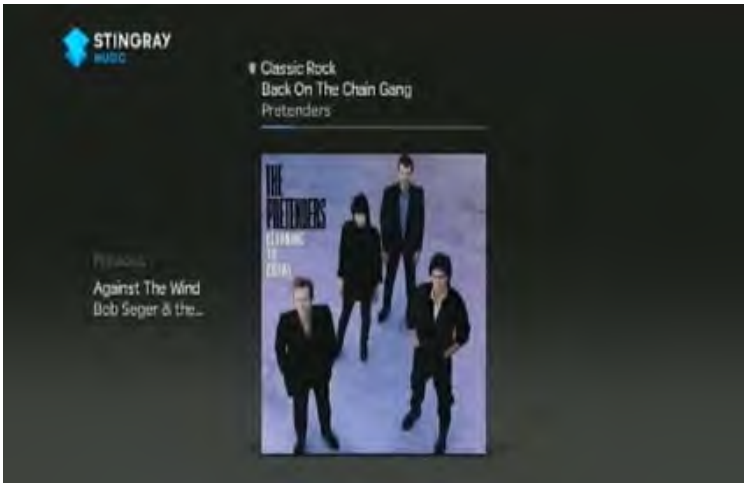
50. The video image generator (*e.g.*, the device running the Stingray Music app) is configured to generate the video image (*e.g.*, the video image including the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image) by retrieving the media assets (*e.g.*, the thumbnail cover art image associated with the sound recording "Back on the Chain Gang") identified in the video image specification.

51. Stingray has used and continues to use the Stingray Music System in a manner that infringes, literally and/or under the doctrine of equivalents, at least claim 8 of the '602 Patent. Stingray puts the invention of claim 8 of the '602 Patent into service, *i.e.*, by controlling

the Stingray Music System as a whole and obtaining benefit from it. Specifically, through the Stingray Music System, Stingray directly, and/or in conjunction with one or more intermediaries or agents provides a system for providing a visual complement (*e.g.*, providing a song title, artist name, and/or album cover image as a visual complement to a song) to an audio service (*e.g.*, the streaming music channels available using the Stingray music app on AT&T U-Verse®).







52. The Stingray Music System includes a music content origin server (*i.e.*, the Stingray UbiquiCAST server), which includes an audio subsystem configured to store a playlist (*e.g.*, a playlist including the sound recording "Back on the Chain Gang") for an audio channel (*e.g.*, a classic rock audio channel) of the audio service (*e.g.*, the Stingray audio service).

53. The Stingray content origin server (*i.e.*, the Stingray UbiquiCASTserver) of the Stingray Music System includes a first transmission system. The Stingray Music System also includes a second transmission system (*e.g.*, the AT&T U-Verse® system). The first transmission system is configured to transmit to the second transmission system audio data corresponding to a sound recording (*e.g.*, audio data corresponding to a sound recording for the song "Back on the Chain Gang") specified in the playlist (*e.g.*, the playlist for the classic rock linear audio channel).

54. The Stingray Music System includes a video image generator (*e.g.*, a device running the Stingray Music app).

55. In the Stingray Music System, the video image generator (*e.g.*, the device running the Stingray Music app) is configured to i) receive, while the sound recording (*e.g.*, the sound recording for the song "Back on the Chain Gang") is being transmitted, a video image

specification (*e.g.*, a specification of a thumbnail cover art image, sound recording title, and recording artist name to be displayed in a video image associated with the sound recording "Back on the Chain Gang") that specifies one or more media asset identifiers (*e.g.*, an identifier of a thumbnail cover art image) that identify one or more media assets (*e.g.*, a thumbnail cover art image for the song "Back on the Chain Gang"). The one or more media assets (*e.g.*, the thumbnail cover art image for the song "Back on the Chain Gang") are associated with the sound recording (*e.g.*, the sound recording for the song "Back on the Chain Gang") that is being transmitted. The video image specification (*e.g.*, the specification of a thumbnail cover art image, sound recording title, and recording artist name to be displayed in a video image associated with the sound recording "Back on the Chain Gang") also specifies sound recording information associated with the sound recording, the sound recording information comprising one or more of the title of the sound recording (*e.g.*, "Back on the Chain Gang") and the name of the artist (*e.g.*, the "Pretenders") who recorded the sound recording.

56. In the Stingray Music System, the video image generator (*e.g.*, the device running the Stingray Music app) is configured to generate a video image using the media assets identified in the video image specification (*e.g.*, the video image including the song title "Back on the Chain Gang," the artist name "Pretenders," and the specified associated cover art image).

57. In the Stingray Music System, the first transmission system (*e.g.*, the Stingray UbiquiCAST music content origin server) is further configured to transmit to the second transmission system (*e.g.*, the AT&T U-Verse® system) the generated video image (*e.g.*, the video image including the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image) multiplexed with the audio data corresponding to the sound recording (*e.g.*, the audio data corresponding to the sound recording "Back on the Chain Gang").

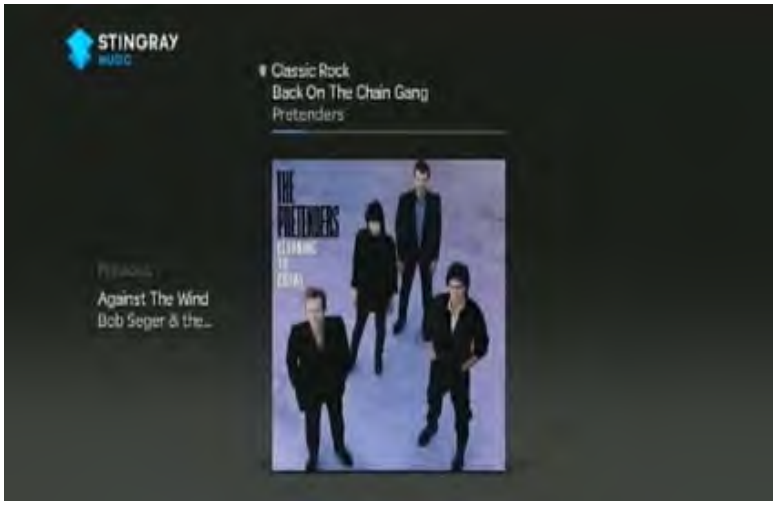
58. The Stingray Music Content origin server (*i.e.*, the Stingray UbiquiCAST server) of the Stingray Music System includes a video subsystem.

59. In the Stingray Music System, the audio subsystem of the Stingray Music Content origin server (*i.e.*, the Stingray UbiquiCAST server) is configured to i) retrieve the audio data corresponding to the sound recording (*e.g.*, the audio data corresponding to the sound recording "Back on the Chain Gang") prior to the first transmission system of the Stingray Music Content origin server transmitting said audio data and ii) provide to the video subsystem of the Stingray Music Content origin server a trigger message comprising an identifier associated with said sound recording (*e.g.*, an identifier associated with the sound recording "Back on the Chain Gang").

U.S. Patent No. 9,357,245

60. Stingray has used and continues to use the Stingray Music Method in a manner that infringes, literally and/or under the doctrine of equivalents, at least claim 1 of the '245 Patent. Specifically, through the Stingray Music Method, Stingray directly, and/or in conjunction with one or more intermediaries or agents, performs a method for providing a visual complement to an audio stream (*e.g.*, the Stingray music app on AT&T's U-Verse® platform provides a song title, artist name, and/or album cover image as a visual complement to a song).





61. The Stingray Music Method transmits, from a first transmission system (*e.g.*, a Stingray Music Content origin server) to a second transmission system (*e.g.*, the AT&T U-Verse® system), audio data corresponding to a selected song.

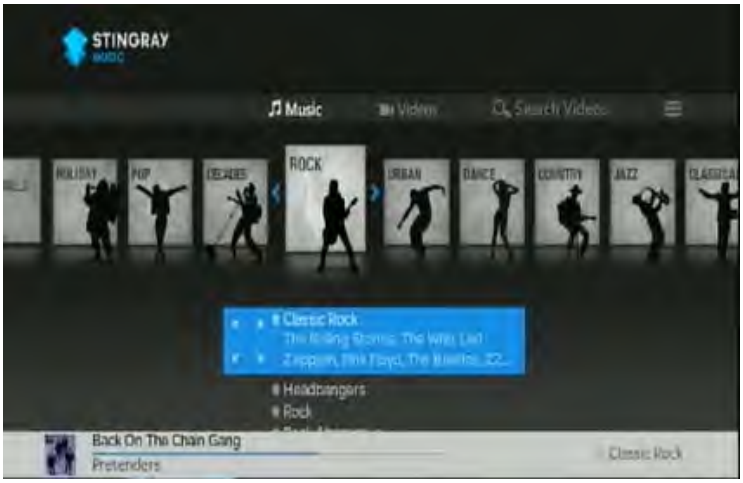
62. The Stingray Music Method transmits a data packet (*e.g.*, an HTML or XML document) that was generated using an identifier identifying the selected song (*e.g.*, the song "Back on the Chain Gang"), wherein the data packet includes a media asset identifier identifying a media asset (*e.g.*, a thumbnail cover art image for the song "Back on the Chain Gang") and further includes song information associated with the selected song (*e.g.*, "Back on the Chain

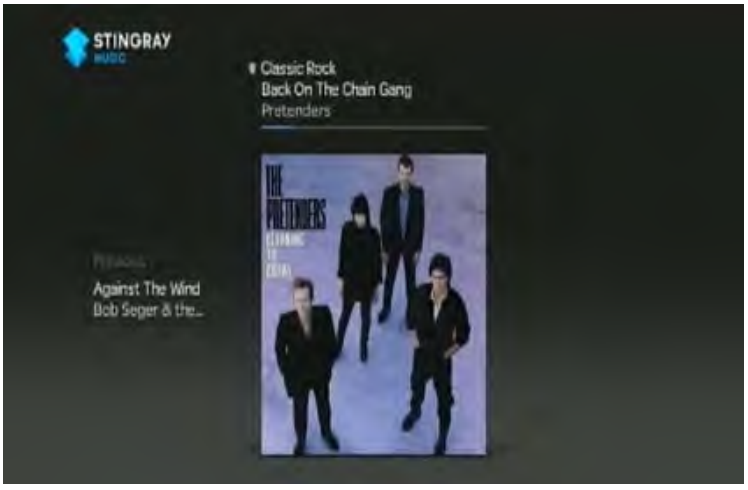
Gang"), the song information comprising the title of the song and the name of the artist who recorded the song (*e.g.*, the "Pretenders").

63. The Stingray Music Method transmits the data packet (*e.g.*, the HTML or XML document) to a receiving system (*e.g.*, a device running the Stingray Music app) that is configured such that, in response to receiving the data packet, the receiving system automatically generates a video image (*e.g.*, a video image including the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image) using the information included in the data packet and automatically outputs the generated video image (*e.g.*, the video image including the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image) such that it is received by a display device that is operable to display the video image to a user of the display device without the user having to select a menu item. The generated video image (*e.g.*, the video image including the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image) includes the song information comprising the title of the song (*e.g.*, "Back on the Chain Gang") and the name of the artist (*e.g.*, "Pretenders").

64. Stingray has used and continues to use the Stingray Music System in a manner that infringes, literally and/or under the doctrine of equivalents, at least claim 12 of the '245 Patent. Stingray puts the invention of claim 12 of the '245 Patent into service, i.e., by controlling the Stingray Music System as a whole and obtaining benefit from it. Specifically, through the Stingray Music System, Stingray directly, and/or in conjunction with one or more intermediaries or agents provides a system for providing a visual complement (*e.g.*, providing a song title, artist name, and/or album cover image as a visual complement to a song) to an audio service (*e.g.*, the streaming music channels available using the Stingray music app on AT&T U-Verse®).


Stingray Music app
Stingray Music, the best music for every moment, place and mood in your life!
STINGRAY
MUSIC
PRESS INFO FOR PREVIEW
PRESS OK TO LAUNCH
GAMES
TOUCHFIT TV
TRIVIA
CNN


STINGRAY
Music
Video
Search Videos
ROCK
Classic Rock
Headbangers
Rock
Back On The Chain Gang
Pretenders
Classic Rock


STINGRAY
Classic Rock
Back On The Chain Gang
Pretenders
Against The Wind
Bob Seger & the...

65. The Stingray Music System provides access to streaming linear audio channels and includes an audio transmission system configured to transmit audio data corresponding to a sound recording specified in a playlist for a linear audio channel.

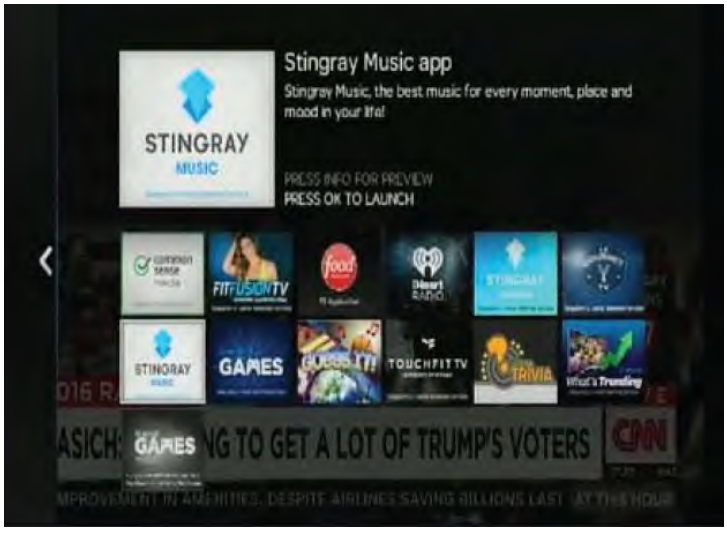
66. The Stingray Music System includes a receiving system (*e.g.*, a device running the Stingray Music app) that includes a receiver and a video image generator. In the Stingray Music System, the receiving system (*e.g.*, the device running the Stingray Music app) is configured to i) in response to receiving a data packet (*e.g.*, an HTML or XML document) that was generated using an identifier identifying the sound recording (*e.g.*, the sound recording for the song "Back on the Chain Gang"), generate a video image (*e.g.*, a video image including the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image) in accordance with information included in the data packet. The data packet includes a media asset identifier identifying a media asset (*e.g.*, a thumbnail cover art image for the song "Back on the Chain Gang") and further includes sound recording information associated with the sound recording, the sound recording information comprising the title of the sound recording (*e.g.*, "Back on the Chain Gang") and the name of the artist (*e.g.*, the "Pretenders") who recorded the sound recording.

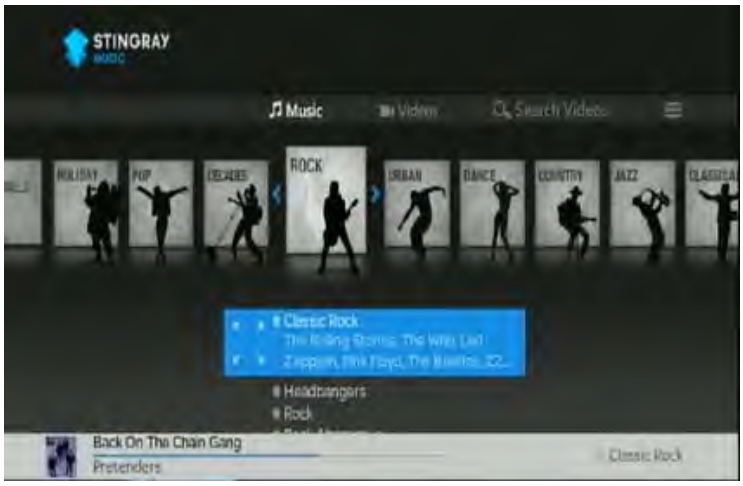
67. In the Stingray Music System, the receiving system (*e.g.*, the device running the Stingray Music app) is configured to ii) automatically output the generated video image such that it is received at a display device operable to display the video image (*e.g.*, the video image including the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image) to a user of the display device without the user having to select a menu item. In the Stingray Music System, the generated video image (*e.g.*, the video image including the song title "Back on the Chain Gang," the artist name "Pretenders," and the

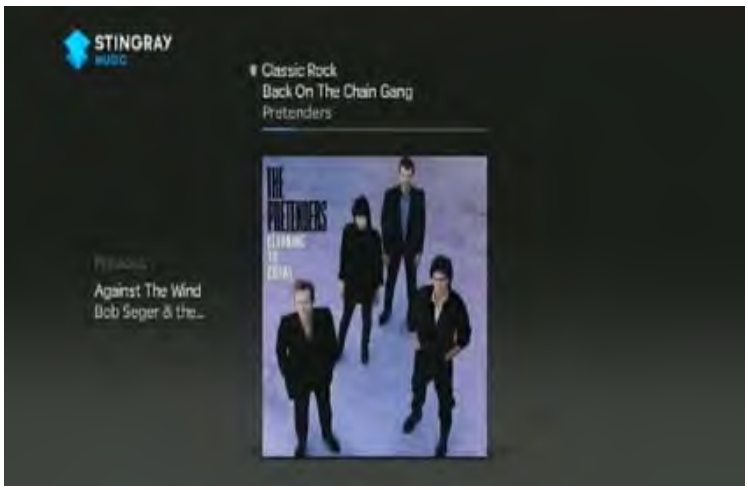
associated cover art image) output by the receiving system (*e.g.*, the device running the Stingray Music app) includes the song information comprising the title of the song (*e.g.*, "Back on the Chain Gang") and the name of the artist (*e.g.*, "Pretenders").

68. In the Stingray Music System, the receiving system (*e.g.*, the device running the Stingray Music app) is configured to retrieve the identified media asset (*e.g.*, the thumbnail cover art image for the song "Back on the Chain Gang") and use the retrieved media asset in generating the video image (*e.g.*, the video image including the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image).

69. Stingray has used and continues to use the Stingray Music Method in a manner that also infringes, literally and/or under the doctrine of equivalents, at least claim 17 of the '245 Patent. Specifically, through the Stingray Music Method, Stingray directly, and/or in conjunction with one or more intermediaries or agents, performs a method for providing a visual complement to an audio stream (*e.g.*, providing a song title, artist name, and/or album cover image as a visual complement to an audio stream for a song).







70. The Stingray Music System, which performs the Stingray Music Method, is a music multicast system for providing the audio stream to a plurality of users essentially simultaneously. The Stingray Music Method automatically selects a song (*e.g.*, a song "Back on the Chain Gang") from a set of available songs (*e.g.*, a set of songs for a classic rock audio channel). The Stingray Music Method generates a data packet (*e.g.*, an HTML or XML document) based on the selected song (*e.g.*, the song "Back on the Chain Gang"), the data packet including a media asset identifier identifying a media asset (*e.g.*, a thumbnail cover art image for the song "Back on the Chain Gang") and further including song information associated with the selected song (*e.g.*, the song "Back on the Chain Gang"), the song information comprising the

title of the song (*e.g.*, "Back on the Chain Gang") and the name of the artist who recorded the song (*e.g.*, the "Pretenders").

71. The Stingray Music System includes a first transmission system (*e.g.*, the Stingray Music Content origin server) and a second transmission system (*e.g.*, the AT&T U-Verse® system). The Stingray Music Method, as a result of automatically selecting the song, transmits, from the first transmission system to the second transmission system, the audio stream that consists of audio data corresponding to the selected song (*e.g.*, audio data for the song "Back on the Chain Gang").

72. The Stingray Music Method transmits the data packet (*e.g.*, the HTML or XML document) to a receiving system (*e.g.*, a device running the Stingray Music app). In the Stingray Music Method, the receiving system (*e.g.*, the device running the Stingray Music app) is configured such that, in response to receiving the data packet (*e.g.*, the HTML or XML document), the receiving system automatically generates a video image (*e.g.*, a video image including the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image) using the information included in the data packet and automatically outputs the generated video image such that it is received by a display device that is operable to display the video image (*e.g.*, the video image including the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image) to a user of the display device without the user having to select a menu item.

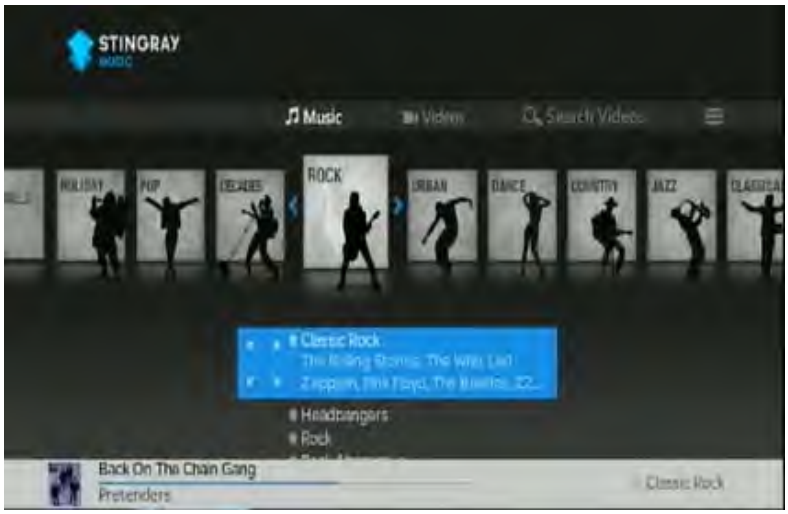
73. In the Stingray Music Method, the generated video image (*e.g.*, the video image including the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image) output by the receiving system (*e.g.*, the device running the Stingray Music app) includes the song information including the title of the song (*e.g.*, "Back on the

Chain Gang") and the name of the artist (*e.g.*, "Pretenders") and the still image identified by the media asset identifier (*e.g.*, the associated cover art image).

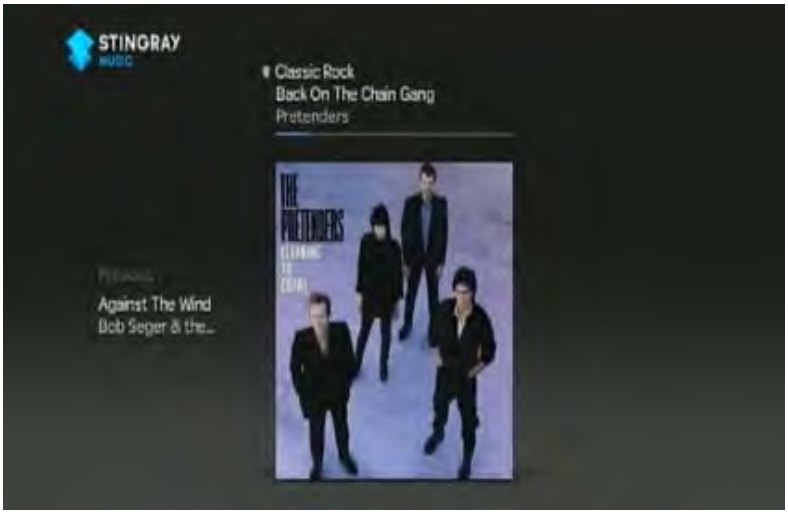
U.S. Patent No. 7,320,025

74. Stingray has used and continues to use the Stingray Music Method in a manner that infringes, literally and/or under the doctrine of equivalents, at least claim 1 of the '025 Patent. Specifically, through the Stingray Music Method, Stingray directly, and/or in conjunction with one or more intermediaries or agents, performs a method.

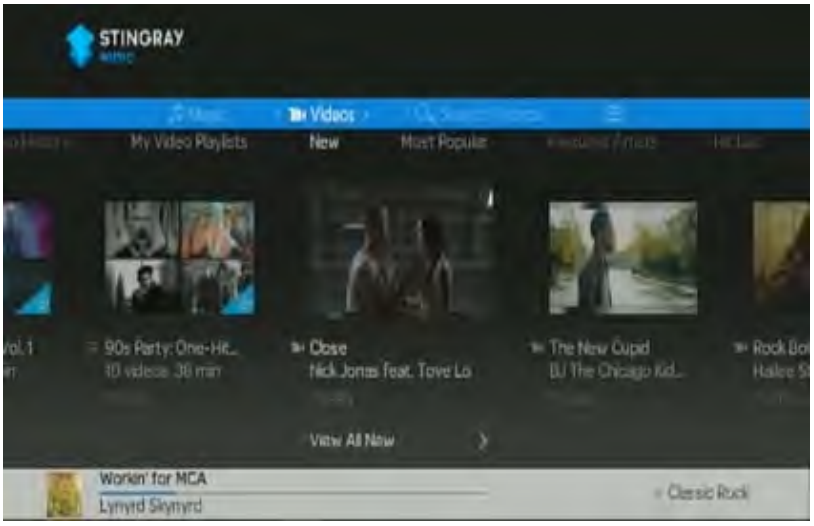
75. The Stingray Music Method configures a client system (*e.g.*, a device running the Stingray Music app) to receive and play music (*e.g.*, the song "Back on the Chain Gang" or "Workin' for MCA") broadcast from a broadcast media source (*e.g.*, the server system operated by Stingray alone or in conjunction with AT&T U-Verse®) through a broadcast channel (*e.g.*, the "Classic Rock" channel).



MC-EGLA-000631

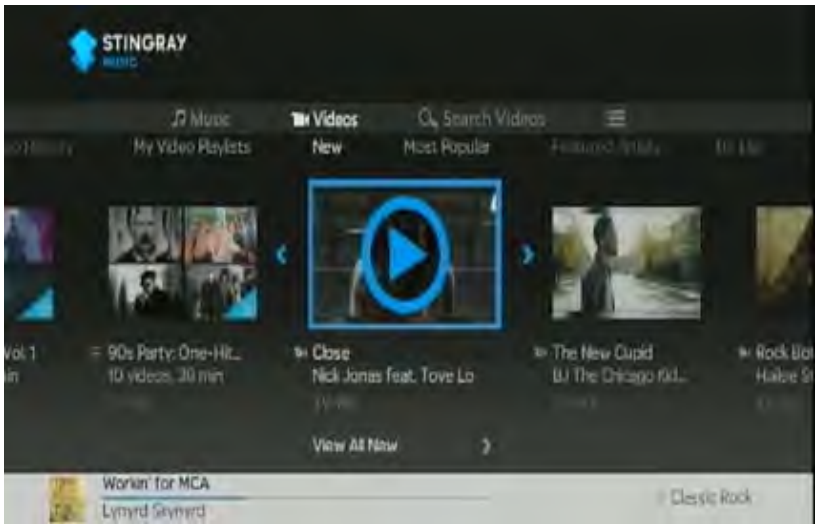


76. The Stingray Music Method configures the client system (*e.g.*, the device running the Stingray Music app) to receive application data that includes a video identifier identifying a video (*e.g.*, an identifier of a music video for the song "Close"). The application data is transmitted with the broadcast music (*e.g.*, the song "Back on the Chain Gang" or "Workin' for MCA").



77. The Stingray Music Method, while the client system (*e.g.*, the device running the Stingray Music app) is playing the broadcast music (*e.g.*, the song "Workin' for MCA"), (a) enables a user of the client system to indicate that the user desires to view the video (*e.g.*, the

music video for the song "Close") and (b) receives an indication that the user desires to view the video (*e.g.*, the music video for the song "Close").

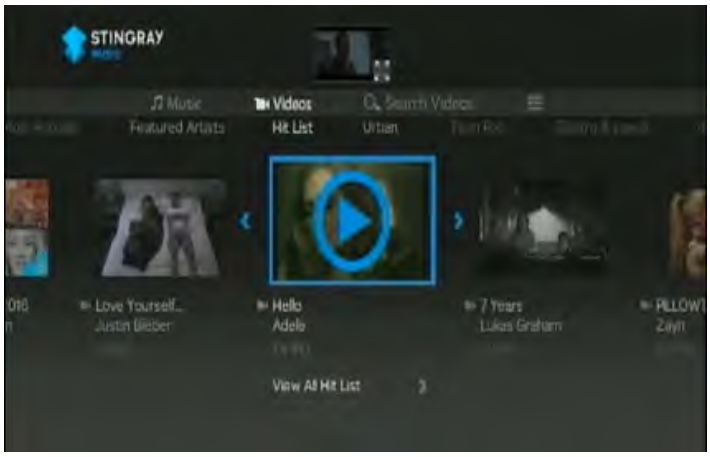


78. The Stingray Music Method, in response to receiving the indication (*e.g.*, the indication that the user desires to view the music video for the song "Close"), automatically ceases the playing of the broadcast music (*e.g.*, the song "Workin' for MCA"), transmits from the client system (*e.g.*, the device running the Stingray Music app) to an on-demand system (*e.g.*, the Stingray UbiquiCAST music content origin server) the received video identifier (*e.g.*, the identifier of the music video for the song "Close"), and establishes an on-demand session between the on-demand system and the client system.

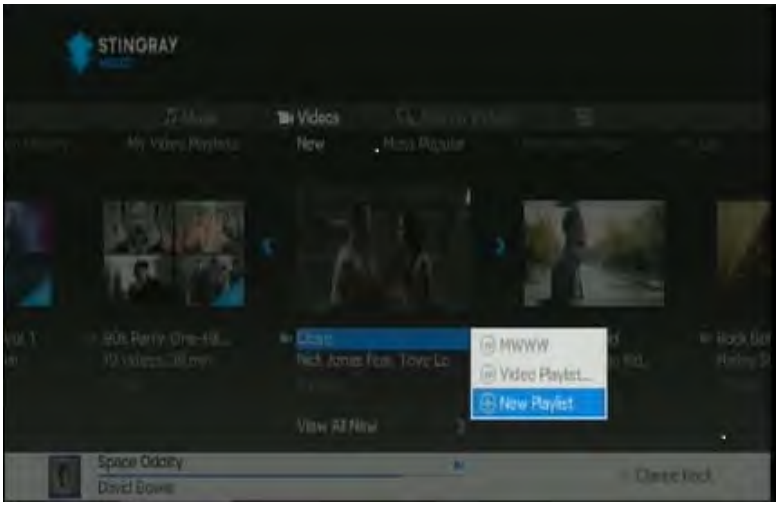
79. The Stingray Music Method, after establishing the on-demand session, transmits from the on-demand system (*e.g.*, the Stingray UbiquiCAST music content origin server) to the client system (*e.g.*, the device running the Stingray music app) the identified video (*e.g.*, the music video for the song "Close"), receives the transmitted video at the client system, and automatically plays the received video in response to receiving the transmitted video from the on-demand system.

80. Stingray has used and continues to use the Stingray Music Method in a manner that infringes, literally and/or under the doctrine of equivalents, at least claim 8 of the '025 Patent. Specifically, through the Stingray Music Method, Stingray directly, and/or in conjunction with one or more intermediaries or agents, performs a video on demand method.

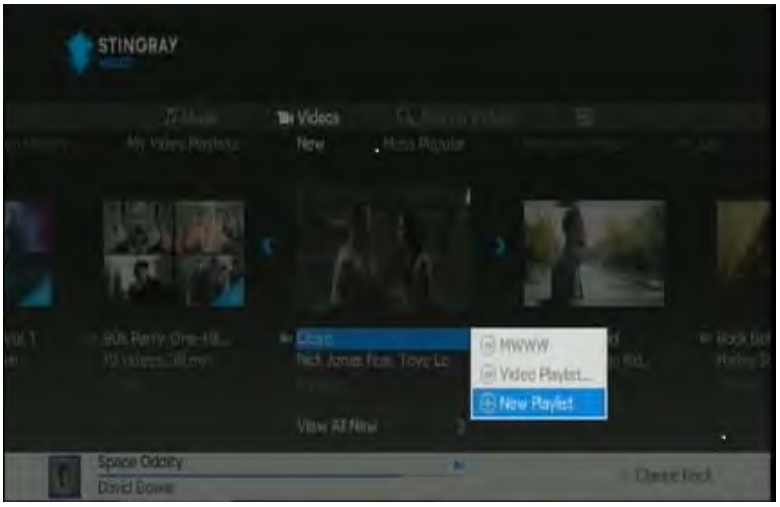


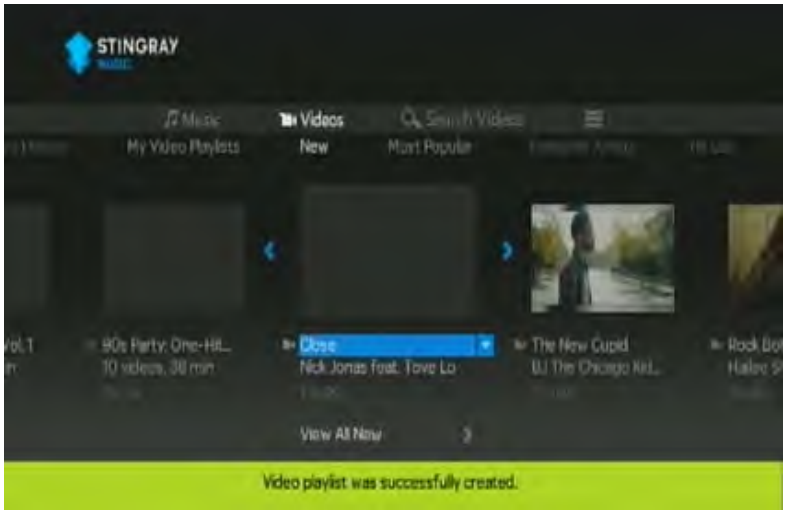


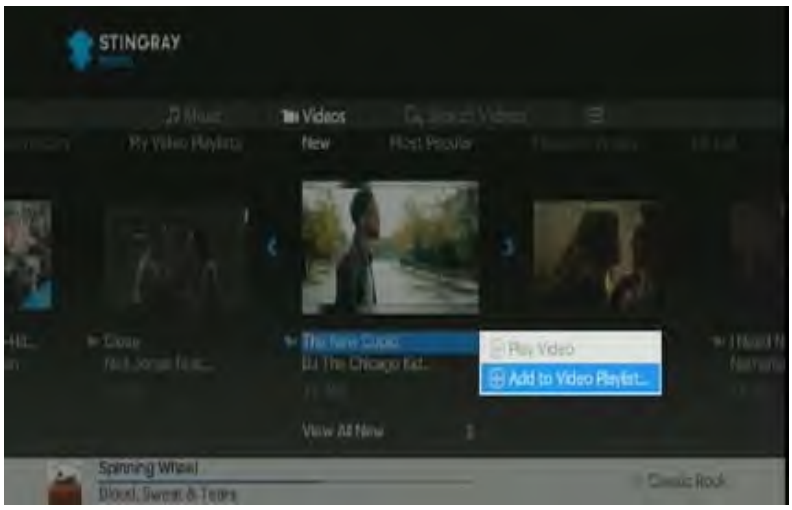
81. The Stingray Music Method receives, at an on-demand system, information indicating that a user desires to view a selected video (*e.g.*, information indicating that a user desires to view a selected music video for the song entitled "Close" in the form of information indicating that the user desires to create a playlist the music video for the song entitled "Close").

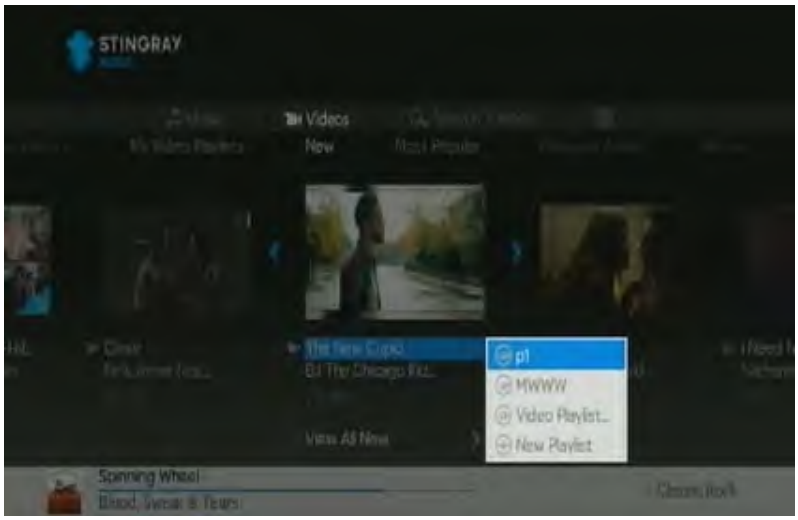


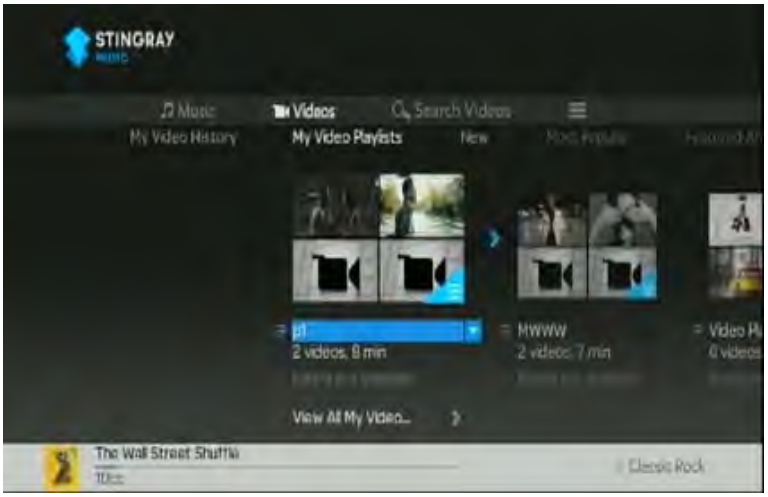
82. The Stingray Music Method creates a playlist (*e.g.*, a playlist entitled "p1"). The playlist includes a plurality of media assets (*e.g.*, music videos for songs entitled "Close" and "The New Cupid"), which include one media asset corresponding to the selected video (*e.g.*, the music video for the song entitled "Close").

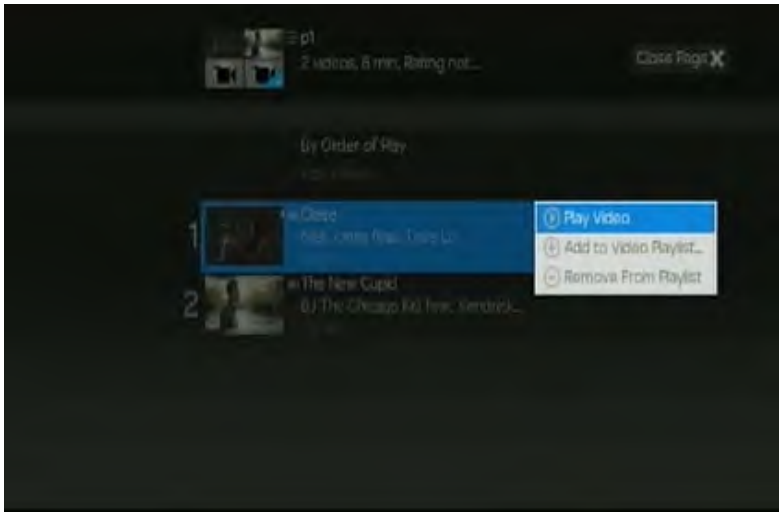



STINGRAY
Videos
New
Most Popular
Close
Nick Jonas feat. Tove Lo
The New Cupid
View All New
Video playlist was successfully created.

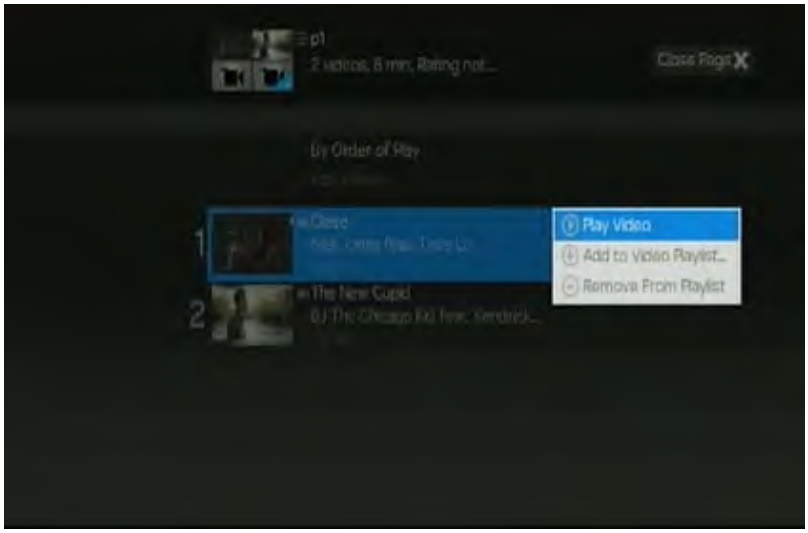

STINGRAY
Videos
New
Play Video
Add to Video Playlist...
View All New
Spinning Wheel
Blood, Sweat & Tears
Classic Rock

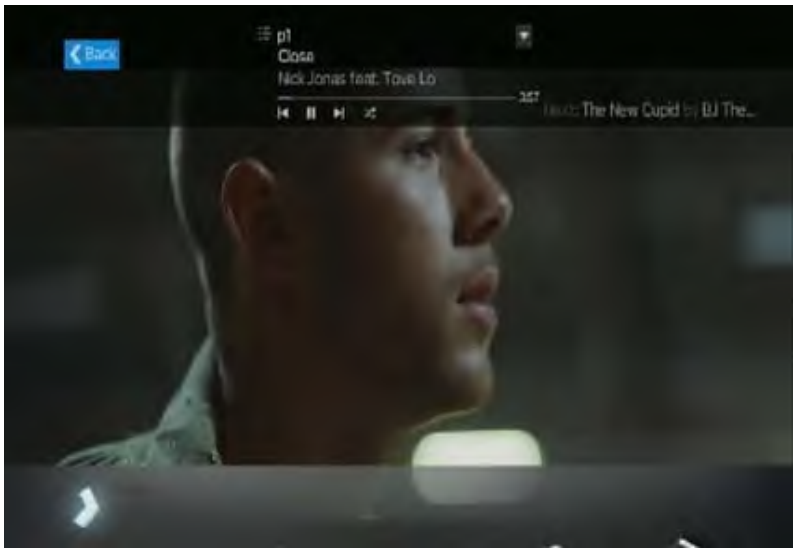

STINGRAY
Videos
New
p1
MWWW
Video Playlist...
New Playlist
Spinning Wheel
Blood, Sweat & Tears



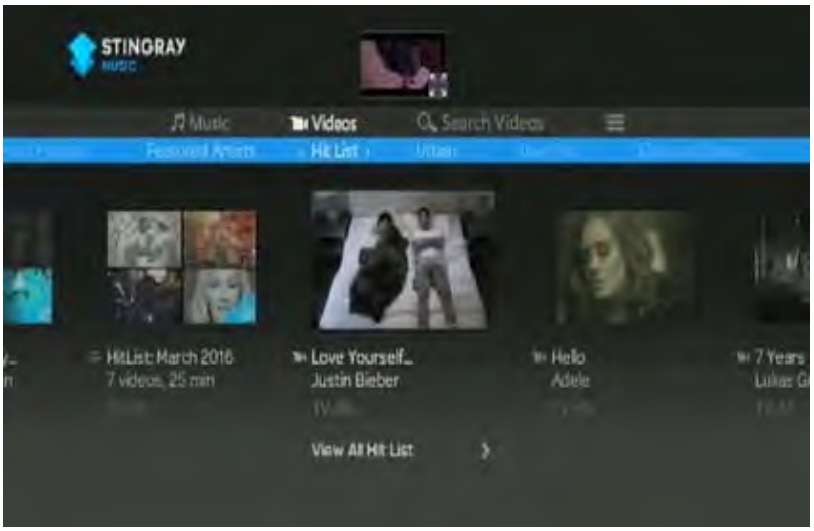


83. The Stingray Music Method transmits to a client system (*e.g.*, a device running the Stingray Music app) a media asset (*e.g.*, the music video for the song entitled “Close”) listed in the playlist (*e.g.*, the playlist entitled “p1”).

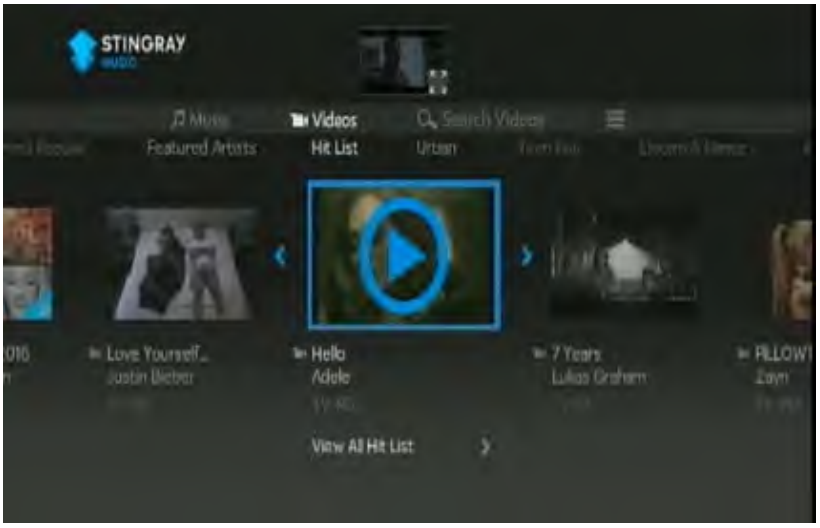




84. The Stingray Music Method transmits to the client system (*e.g.*, the device running the Stingray Music app) a video identifier (*e.g.*, a thumbnail identifying a music video for the song entitled "Hello") while transmitting to the client system the media asset (*e.g.*, the music video for the song entitled "Close," which continues to play at the top center of the Stingray music app screen).



85. While the client system (*e.g.*, the device running the Stingray Music app) is playing the media asset (*e.g.*, the music video for the song entitled "Close," which plays at the top center of the Stingray Music app screen), the Stingray Music Method (a) enables a user of the client system to indicate that that the user desires to view the video identified by the video identifier (*e.g.*, the music video for the song entitled "Hello") and (b) receives an indication that the user desires to view the video (*e.g.*, the music video for the song entitled "Hello").



86. The Stingray Music Method receives from the client system a message including the video identifier (*e.g.*, the video identifier for the music video for the song entitled "Hello").

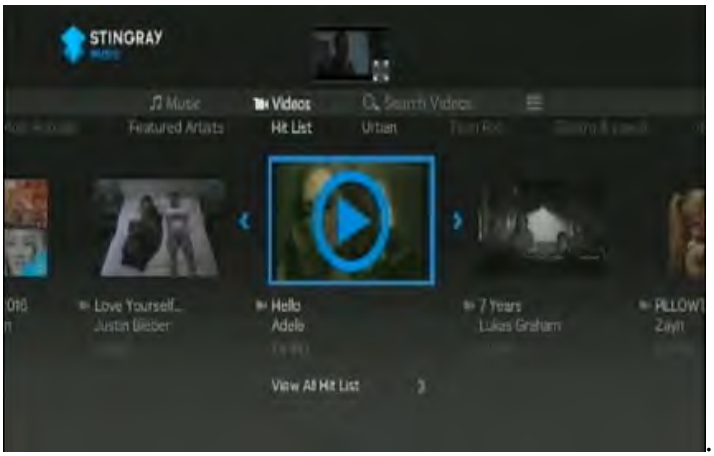
The message is received while at least a portion of the media asset is being transmitted to the client system (*e.g.*, while at least a portion of the music video for the song entitled "Close" plays at the top center of the Stingray music app screen).

87. The Stingray Music Method, in response to receiving the message from the client system (*e.g.*, the device running the Stingray Music app), ceases transmitting the media asset (*e.g.*, the music video for the song entitled "Close") and transmits the video identified by the video identifier (*e.g.*, the music video for the song entitled "Hello").

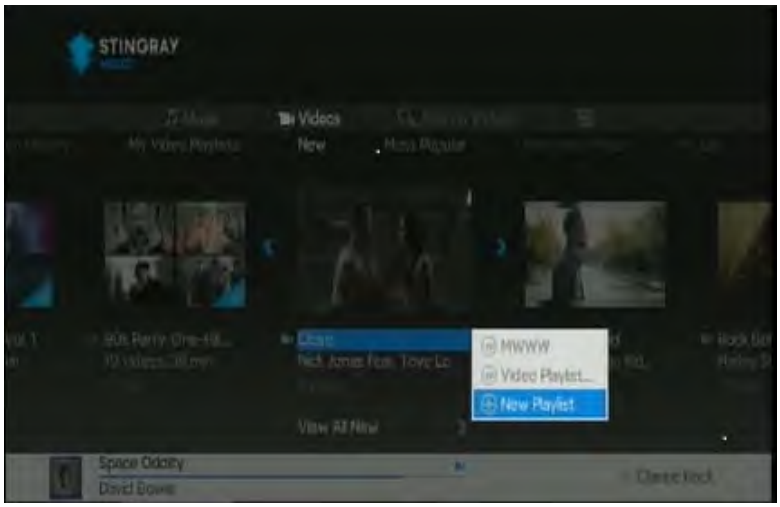
U.S. Patent No. 9,351,045

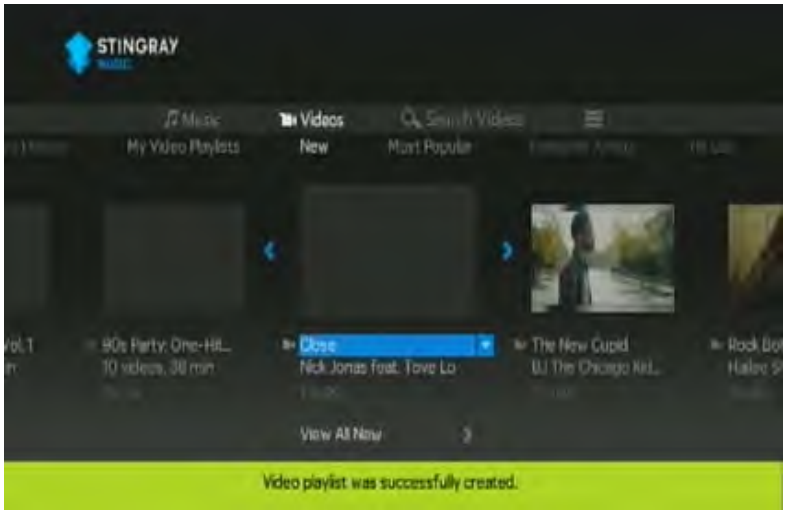
88. Stingray has used and continues to use the Stingray Music Method in a manner that infringes, literally and/or under the doctrine of equivalents, at least claim 1 of the '045 Patent. Specifically, through the Stingray Music Method, Stingray directly, and/or in conjunction with one or more intermediaries or agents, performs a video-on-demand method.

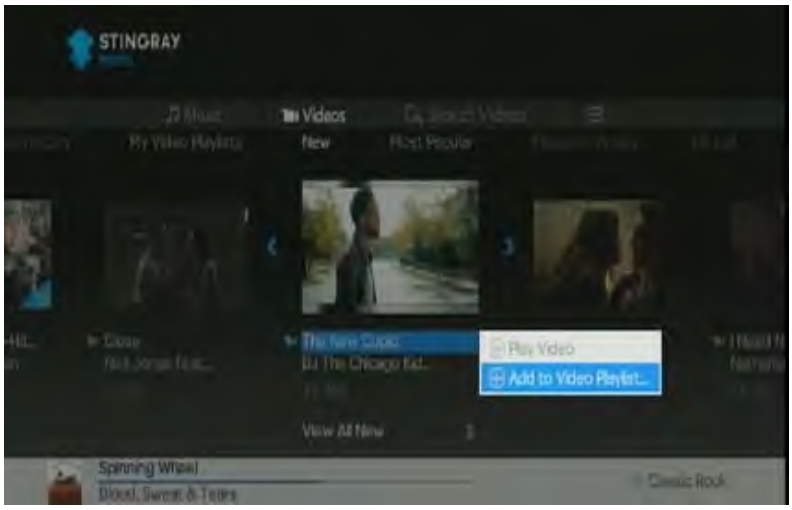


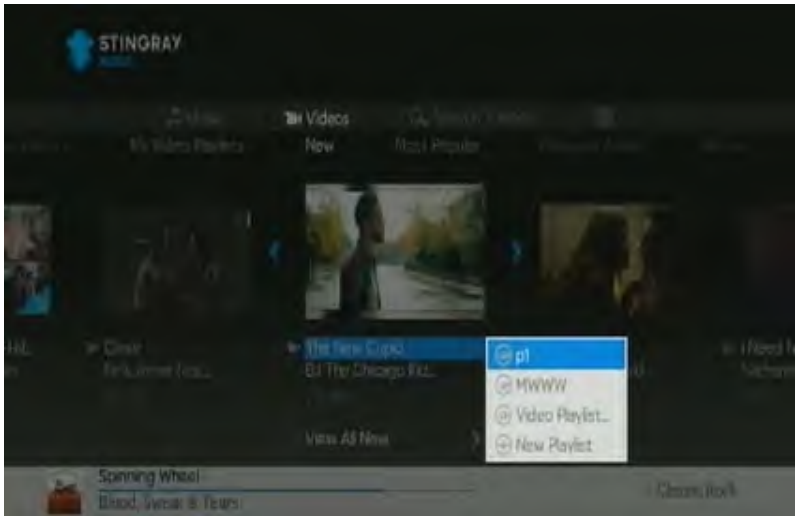


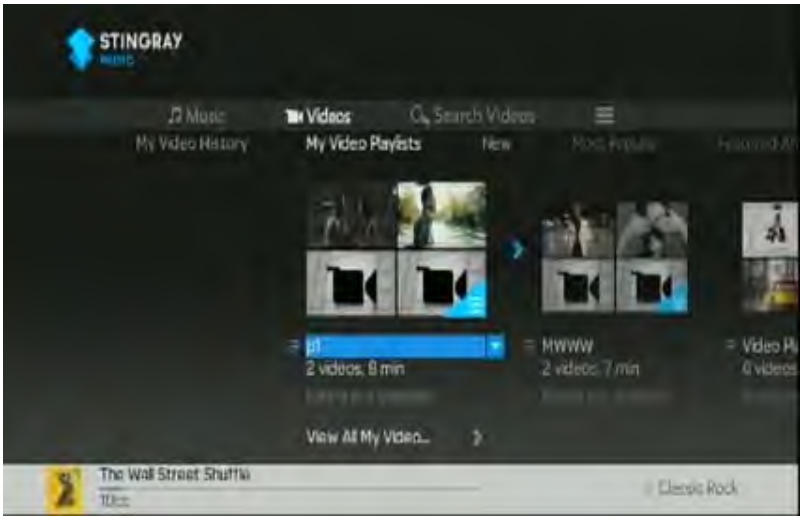
89. The Stingray Music Method creates a playlist (*e.g.*, a playlist entitled "p1"). The playlist comprises a set of media asset identifiers (*e.g.*, song names identifying music videos for songs entitled "Close" and "The New Cupid") selected by a user of a client system (*e.g.*, the device running the Stingray Music app). Each media asset identifier included in the set of media asset identifiers identifies a media asset (*e.g.*, each of the song names in the playlist entitled "p1" identifies a music video for a song entitled "Close" or "The New Cupid").



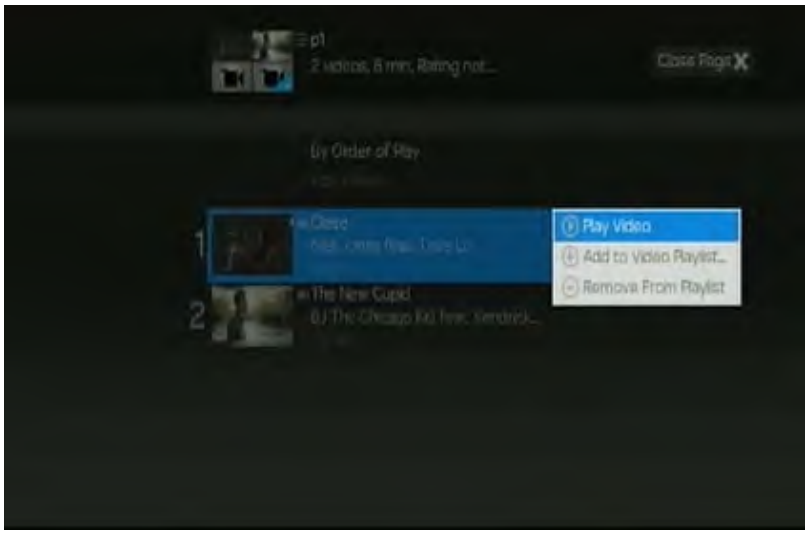

STINGRAY
Videos
New
Most Popular
Close
Nick Jonas feat. Tove Lo
The New Cupid
View All New
Video playlist was successfully created.


STINGRAY
Videos
New
Play Video
Add to Video Playlist...
View All New
Spinning Wheel
Blood, Sweat & Tears
Classic Rock

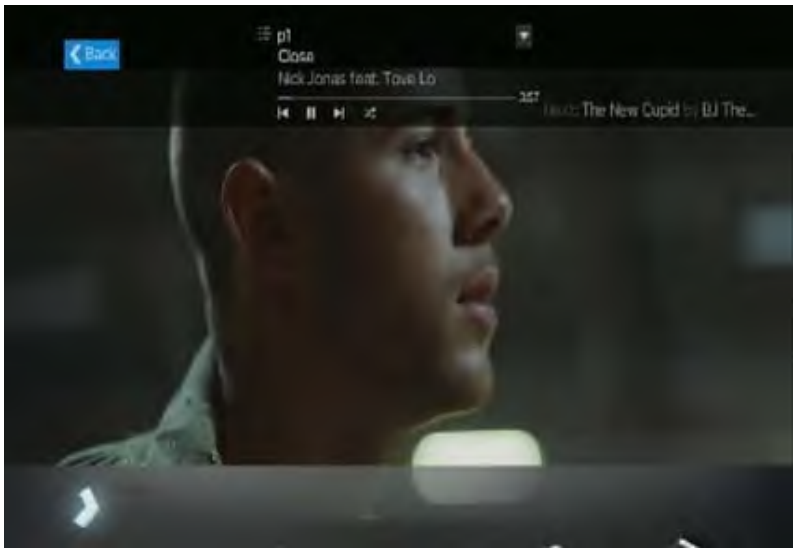

STINGRAY
Videos
New
p1
MWWW
Video Playlist...
New Playlist
Spinning Wheel
Blood, Sweat & Tears
Classic Rock



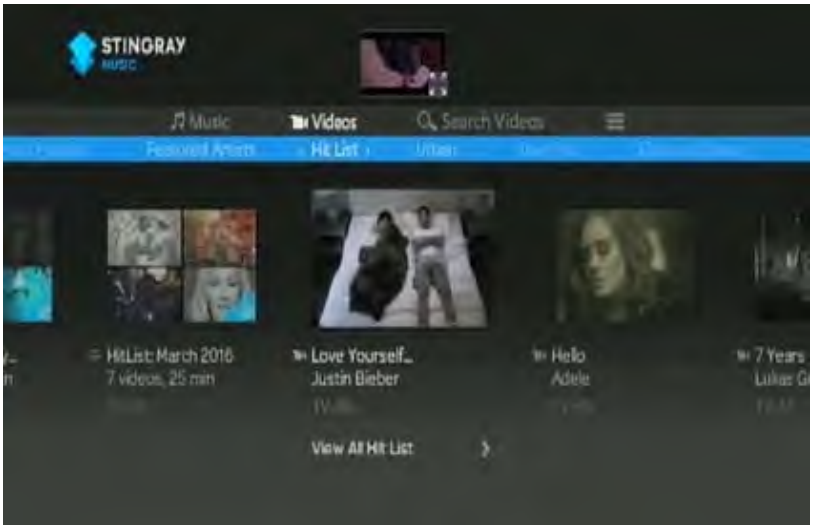
90. The Stingray Music Method receives information transmitted by the client system (*e.g.*, the device running the Stingray Music app). The received information indicates that a user of the client system desires to view a media asset (*e.g.*, the music video for the song entitled "Close") identified by a media asset identifier (*e.g.*, the song name identifying a music video for the song entitled "Close") included in the playlist (*e.g.*, the playlist entitled "p1").



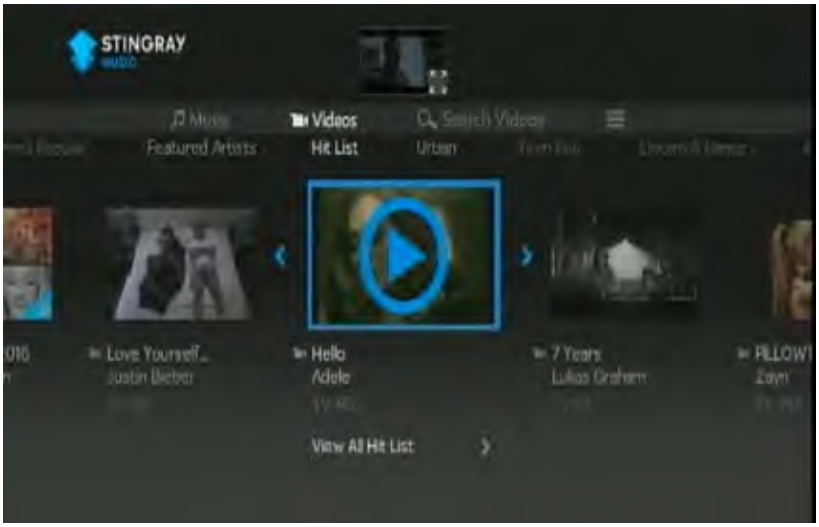
91. The Stingray Music Method, in response to receiving the information, transmits to the client system (*e.g.*, the device running the Stingray Music app) the media asset desired by the user (*e.g.*, the music video for the song entitled "Close").



92. The Stingray Music Method transmits to the client system (*e.g.*, the device running the Stingray Music app) a video identifier (*e.g.*, a thumbnail identifying a music video for the song entitled "Hello") while transmitting to the client system the desired media asset (*e.g.*, the music video for the song entitled "Close," which continues to play at the top center of the Stingray Music app screen), the video identifier identifying a video (*e.g.*, the music video for the song entitled "Hello").



93. The Stingray Music Method, while the client system (*e.g.*, the device running the Stingray Music app) is playing the desired media asset (*e.g.*, the music video for the song entitled "Close," which plays at the top center of the Stingray Music app screen), (a) enables the user of the client system to indicate that the user desires to view the video identified by the video identifier (*e.g.*, the music video for the song entitled "Hello") and then (b) receives from the client system a message comprising information indicating that the user desires to view the video identified by the video identifier (*e.g.*, the music video for the song entitled "Hello"). The message is received while at least a portion of the media asset is being transmitted to the client system (*e.g.*, while at least a portion of the music video for the song entitled "Close" plays at the top center of the Stingray Music app screen).



94. The Stingray Music Method, in response to receiving the message from the client system (*e.g.*, the device running the Stingray Music app), ceases transmitting to the client system the media asset (*e.g.*, the music video for the song entitled "Close") and transmits to the client system video data corresponding to the video identified by the video identifier (*e.g.*, video data corresponding to the music video for the song entitled "Hello").



95. Stingray has used and continues to use the Stingray Music System in a manner that also infringes, literally and/or under the doctrine of equivalents, at least claim 6 of the '045 Patent. Stingray puts the invention of claim 6 of the '045 Patent into service, *i.e.*, by controlling the Stingray Music System as a whole and obtaining benefit from it. Specifically, through the Stingray Music System, Stingray directly, and/or in conjunction with one or more intermediaries or agents, provides a video-on-demand system.

96. The Stingray Music System includes and/or uses a transmitter.

97. The Stingray Music System includes and/or uses a receiver.

98. The Stingray Music System includes and/or uses a computer system coupled to the transmitter and the receiver, and the computer system is configured to perform a method, as described below.

99. The computer system of the Stingray Music System creates a playlist (*e.g.*, a playlist entitled "p1"). The playlist comprises a set of media asset identifiers (*e.g.*, media asset identifiers identifying music videos for songs entitled "Close" and "The New Cupid") selected

by a user of a client system (*e.g.*, a device running the Stingray Music app). Each media asset identifier included in the set of media asset identifiers identifies a media asset (*e.g.*, each of the song names in the playlist entitled "p1" identifies a music video for a song entitled "Close" or "The New Cupid").

100. The computer system of the Stingray Music System, in response to receiving from the client system (*e.g.*, the device running the Stingray Music app) information indicating that a user of the client system desires to view a media asset (*e.g.*, the music video for the song entitled "Close") identified by a media asset identifier (*e.g.*, the song name identifying the music video for the song entitled "Close") included in the playlist (*e.g.*, the playlist entitled "p1"), transmits to the client system the media asset desired by the user (*e.g.*, the music video for the song entitled "Close").

101. The computer system of the Stingray Music System transmits to the client system (*e.g.*, the device running the Stingray Music app) a video identifier (*e.g.*, a thumbnail identifying a music video for the song entitled "Hello") while transmitting to the client system the desired media asset (*e.g.*, the music video for the song entitled "Close," which continues to play at the top center of the Stingray Music app screen), the video identifier identifying a video (*e.g.*, the music video for the song entitled "Hello").

102. The computer system of the Stingray Music System, while the client system (*e.g.*, the device running the Stingray Music app) is playing the desired media asset (*e.g.*, the music video for the song entitled "Close," which plays at the top center of the Stingray Music app screen), (a) enables the user of the client system to indicate that the user desires to view the video identified by the video identifier (*e.g.*, the music video for the song entitled "Hello").

103. The computer system of the Stingray Music System then (b) in response to receiving from the client system (*e.g.*, the device running the Stingray Music app) a message comprising information indicating that the user desires to view the video identified by the video identifier (*e.g.*, the music video for the song entitled "Hello"), ceases transmitting to the client system the media asset (*e.g.*, the music video for the song entitled "Close") and transmits to the client system video data corresponding to the video identified by the video identifier (*e.g.*, video data corresponding to the music video for the song entitled "Hello").

104. Stingray has used and continues to use the Stingray Music Method in a manner that also infringes, literally and/or under the doctrine of equivalents, at least claim 11 of the '045 Patent. Specifically, through the Stingray Music Method, Stingray directly, and/or in conjunction with one or more intermediaries or agents, performs a video-on-demand method. The Stingray Music Method provides access to a plurality of streaming music channels associated with a genre of music.

105. The Stingray Music Method transmits simultaneously to a plurality of client systems (*e.g.*, devices running the Stingray Music app) audio data corresponding to the selected song (*e.g.*, the song "Back on the Chain Gang" or "Workin' for MCA"). Each of the plurality of client systems is configured to use the audio data to play the song (*e.g.*, the song "Back on the Chain Gang" or "Workin' for MCA") so that each user of each of the plurality of client systems can listen to the song. The plurality of client systems includes a first client system and a second client system (*e.g.*, first and second devices running the Stingray Music app).

106. The Stingray Music Method, while transmitting the audio data (*e.g.*, the audio data for the song "Workin' for MCA") to the plurality of client systems (*e.g.*, the devices running the Stingray Music app), transmits to the first client system (*e.g.*, the first device running the

Stingray Music app) a video identifier identifying a video (*e.g.*, a thumbnail identifying a music video for the song "Close").

107. The Stingray Music Method, while the first client system (*e.g.*, the first device running the Stingray Music app) is playing the song (*e.g.*, the song "Workin' for MCA"), (a) enables the user of the first client system to indicate that the user desires to view the video identified by the video identifier (*e.g.*, the music video for the song "Close") and then (b) receives from the first client system a message comprising information indicating that the user desires to view the video identified by the video identifier (*e.g.*, the music video for the song "Close"). The message is received while at least a portion of the audio data (*e.g.*, the audio data for the song "Workin' for MCA") is being transmitted to the first client system.

108. The Stingray Music Method, in response to receiving the message from the first client system (*e.g.*, the first device running the Stingray Music app), transmits to the first client system video data corresponding to the video identified by the video identifier (*e.g.*, video data corresponding to the music video for the song "Close").

109. Stingray has used and continues to use the Stingray Music System in a manner that infringes, literally and/or under the doctrine of equivalents, at least claim 16 of the '045 Patent. Stingray puts the invention of claim 16 of the '045 Patent into service, *i.e.*, by controlling Stingray Music System as a whole and obtaining benefit from it. Specifically, through the Stingray Music System, Stingray directly, and/or in conjunction with one or more intermediaries or agents, provides a video-on-demand system.

110. The Stingray Music System includes and/or uses a transmitter.

111. The Stingray Music System includes and/or uses a receiver.

112. The Stingray Music System includes and/or uses a computer system coupled to the transmitter and the receiver, and the computer system is configured to perform a method, as described below.

113. The computer system of the Stingray Music System selects a song (*e.g.*, the song "Back on the Chain Gang" or "Workin' for MCA") for one of a plurality of music channels (*e.g.*, the "Classic Rock" channel). The one of the plurality of music channels (*e.g.*, the "Classic Rock" channel) is associated with a genre of music (*e.g.*, the classic rock genre).

114. The computer system of the Stingray Music System transmits simultaneously to a plurality of client systems (*e.g.*, devices running the Stingray Music app) audio data corresponding to the selected song (*e.g.*, the song "Back on the Chain Gang" or "Workin' for MCA"). Each of the plurality of client systems is configured to use the audio data to play the song (*e.g.*, the song "Back on the Chain Gang" or "Workin' for MCA") so that each user of each of the plurality of client systems can listen to the song. The plurality of client systems includes a first client system and a second client system (*e.g.*, first and second devices running the Stingray Music app).

115. The computer system of the Stingray Music System, while transmitting the audio data (*e.g.*, the audio data for the song "Workin' for MCA") to the plurality of client systems (*e.g.*, the devices running the Stingray Music app), transmits to the first client system (*e.g.*, the first device running the Stingray Music app) a video identifier identifying a video (*e.g.*, a thumbnail identifying a music video for the song "Close").

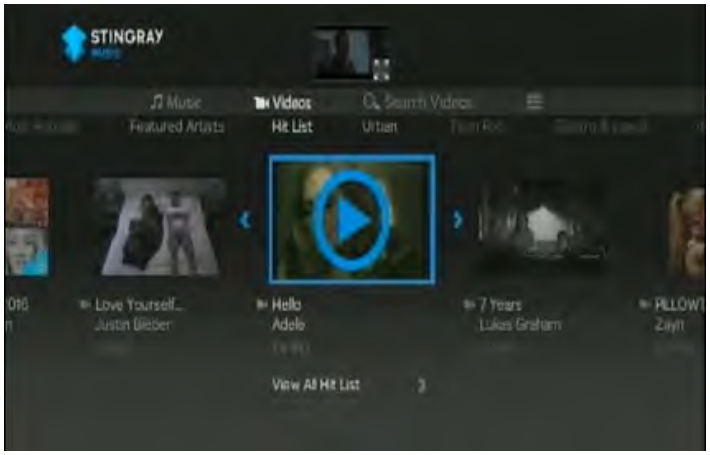
116. The computer system of the Stingray Music System, while the first client system (*e.g.*, the first device running the Stingray Music app) is playing the song (*e.g.*, the song "Workin' for MCA"), (a) enables the user of the first client system to indicate that the user

desires to view the video identified by the video identifier (*e.g.*, the music video for the song "Close") and then (b) in response to receiving from the first client system a message comprising information indicating that the user desires to view the video identified by the video identifier (*e.g.*, the music video for the song "Close"), transmits to the first client system video data corresponding to the video identified by the video identifier (*e.g.*, video data corresponding to the music video for the song "Close").

U.S. Patent No. 9,414,121

117. Stingray has used and continues to use the Stingray Music System in a manner that infringes, literally and/or under the doctrine of equivalents, at least claim 1 of the '121 Patent. Stingray puts the invention of claim 1 of the '121 Patent into service, *i.e.*, by controlling the Stingray Music System as a whole and obtaining benefit from it. Specifically, through the Stingray Music System, Stingray directly, and/or in conjunction with one or more intermediaries or agents (*e.g.*, AT&T using (i) a UbiquiCAST server provided by Stingray, (ii) the AT&T U-verse® system provided by AT&T, and (iii) a set top box provided by AT&T), provides a system for providing an on-demand, personalized media service and a broadcast service to a set-top-box.





118. The Stingray Music System includes/uses a distribution network (*e.g.*, AT&T's U-verse® distribution network). The set-top-box (*e.g.*, the AT&T set-top-box) is connected to the distribution network.

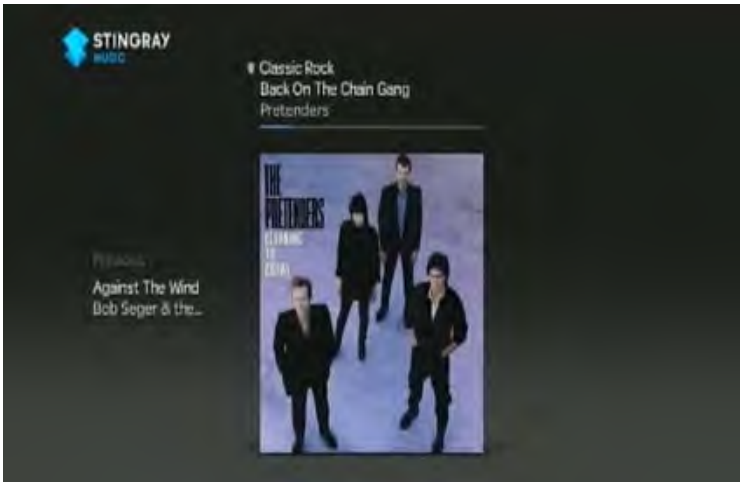
119. The Stingray Music System transmits a plurality of media channels (*e.g.*, the streaming music channels available using the Stingray music app on AT&T U-verse®).

120. The Stingray Music System includes/uses a distribution system including a transmission system operable to transmit via the distribution network (*e.g.*, AT&T's U-verse® distribution network) a media channel (*e.g.*, a "Classic Rock" media channel) comprising a stream of audio and video data (*e.g.*, audio data for the song "Back on the Chain Gang" or "Workin' for MCA" and video data including song title, artist name, and album art data).

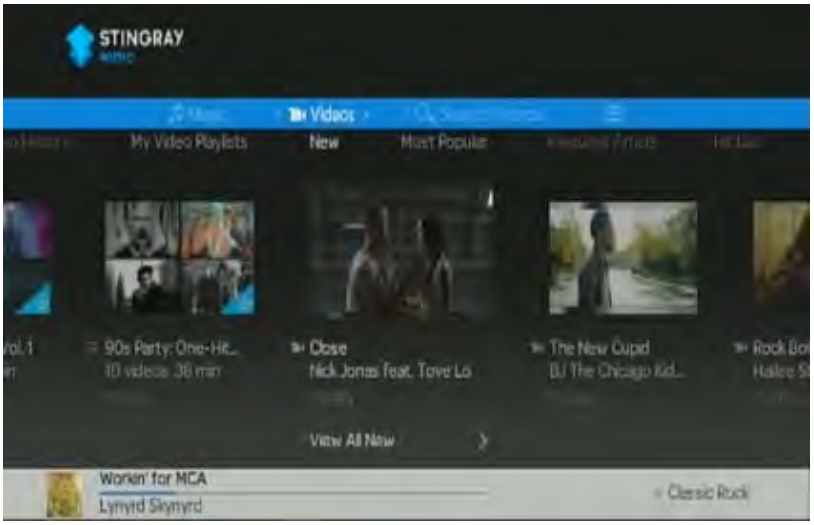
121. In the Stingray Music System, the set-top-box is operable to receive the media channel (*e.g.*, a "Classic Rock" media channel) via the distribution network.

122. In the Stingray Music System, the set-top-box is operable to reproduce the stream of audio data (*e.g.*, audio data for the song "Back on the Chain Gang" or "Workin' for MCA") included in the received media channel (*e.g.*, the "Classic Rock" media channel) for a user of the client system (*e.g.*, the device running the Stingray Music app) to hear.

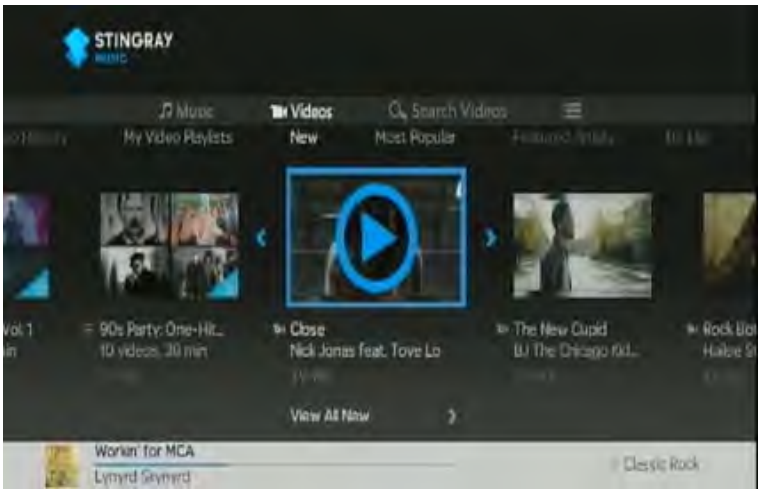
123. In the Stingray Music System, the set-top-box is operable to display video corresponding to the stream of video data (*e.g.*, video corresponding to the song title, artist name, and album art data for the song "Back on the Chain Gang" or "Workin' for MCA") included in the received media channel (*e.g.*, the "Classic Rock" media channel) on a display device for the user to see.



124. In the Stingray Music System, the set-top-box is operable to receive via the distribution network video identifier information comprising an identifier (*e.g.*, a thumbnail or title identifying a music video for the song entitled "Close") for identifying an available on-demand video (*e.g.*, the music video for the song entitled "Close") while displaying on the display device the video corresponding to the stream of video data (*e.g.*, the video corresponding to the song title, artist name, and album art data) included in the received media channel (*e.g.*, the "Classic Rock" media channel).



125. In the Stingray Music System, the set-top-box is operable to display a user selectable element (*e.g.*, a thumbnail image for the music video for the song entitled "Close") for requesting the available on-demand video (*e.g.*, the music video for the song entitled "Close") on the display device so that the user selectable element is displayed on the display device together with at least a portion of the video corresponding to the stream of video data (*e.g.*, video corresponding to the song title, artist name, and album art data for the song "Back on the Chain Gang" or "Workin' for MCA") as a result of receiving the video identifier information (*e.g.*, the thumbnail or title identifying a music video for the song entitled "Close") transmitted to the set-top-box using the distribution network. The user selectable element (*e.g.*, the thumbnail image for the music video for the song entitled "Close") is associated with the available on-demand video (*e.g.*, the music video for the song entitled "Close").

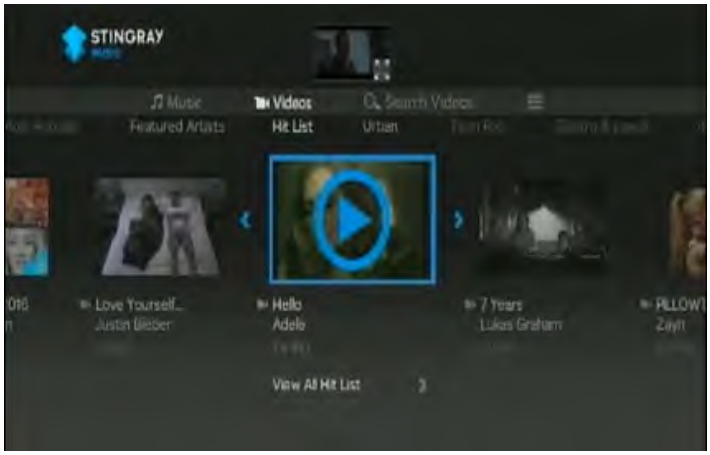


126. In the Stingray Music System, the set-top-box is operable to, in response to the user of the set-top-box selecting the user selectable element (*e.g.*, the thumbnail or title identifying the music video for the song entitled "Close"), causing an on-demand video system (*e.g.*, the Stingray UbiquiCAST music content origin server) to transmit to the set-top-box the available on-demand video (*e.g.*, the music video for the song entitled "Close") by transmitting to the on-demand video system an on-demand request message (*e.g.*, a message indicating that the thumbnail or title identifying the music video for the song entitled "Close" was selected).



127. Stingray has used and continues to use the Stingray Music Method in a manner that infringes, literally and/or under the doctrine of equivalents, at least claim 6 of the '121 Patent. Specifically, through the Stingray Music Method, Stingray directly, and/or in conjunction with one or more intermediaries or agents performs a method for providing an on-demand service to a user of a set-top-box (*e.g.*, an AT&T set-top-box).

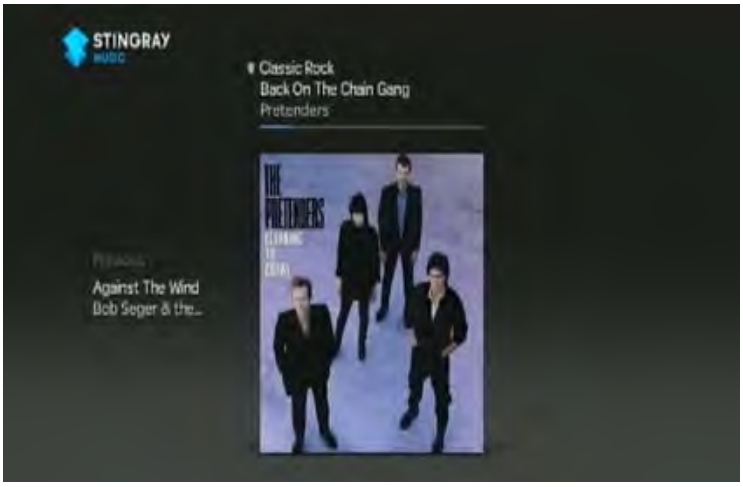




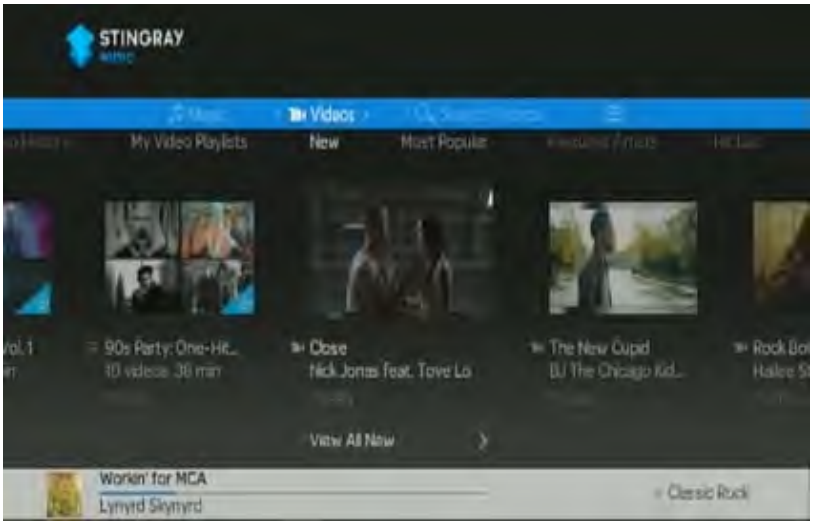
128. In the Stingray Music Method, the set-top-box (*e.g.*, the AT&T set-top-box) receives via a cable connected to a network (*e.g.*, AT&T's U-verse® distribution network) a media channel (*e.g.*, the "Classic Rock" media channel) comprising a stream of audio and video

data (*e.g.*, audio data for the song "Back on the Chain Gang" or "Workin' for MCA" and video data including song title, artist name, and album art data).

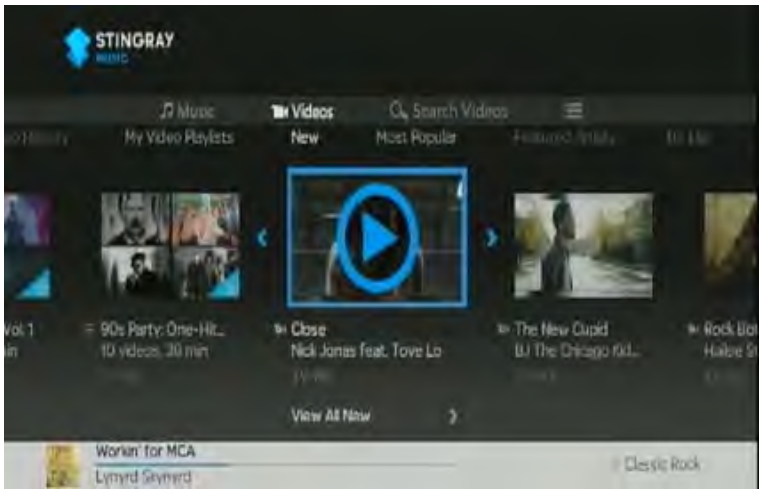
129. In the Stingray Music Method, the set-top-box displays on a display device video corresponding to the video data stream (*e.g.*, video corresponding to the song title, artist name, and album art data for the song "Back on the Chain Gang" or "Workin' for MCA").



130. In the Stingray Music Method, while displaying said video (*e.g.*, the video corresponding to the song title, artist name, and album art data for the song "Back on the Chain Gang" or "Workin' for MCA"), the set-top-box receives video identifier information (*e.g.*, a thumbnail or title identifying a music video for the song entitled "Close") transmitted via the cable connected to the network. The video identifier information comprises an identifier for identifying an available on-demand video (*e.g.*, the music video for the song entitled "Close").



131. In the Stingray Music Method, the set top box displays on the display device, as a result of receiving said video identifier information (*e.g.*, the thumbnail or title identifying the music video for the song entitled "Close"), a user selectable element (*e.g.*, a thumbnail image for the music video for the song entitled "Close") for requesting the available on-demand video (*e.g.*, the music video for the song entitled "Close") while also displaying video corresponding to the video data stream (*e.g.*, the video corresponding to the song title, artist name, and album art data for the song "Back on the Chain Gang" or "Workin' for MCA") so that the user can see the user selectable element (*e.g.*, the thumbnail image for the music video for the song entitled "Close") while also seeing the displayed video corresponding to the video data stream (*e.g.*, the video corresponding to the song title, artist name, and album art data for the song "Back on the Chain Gang" or "Workin' for MCA"). The user selectable element (*e.g.*, the thumbnail image for the music video for the song entitled "Close") is associated with the available on-demand video (*e.g.*, the music video for the song entitled "Close").

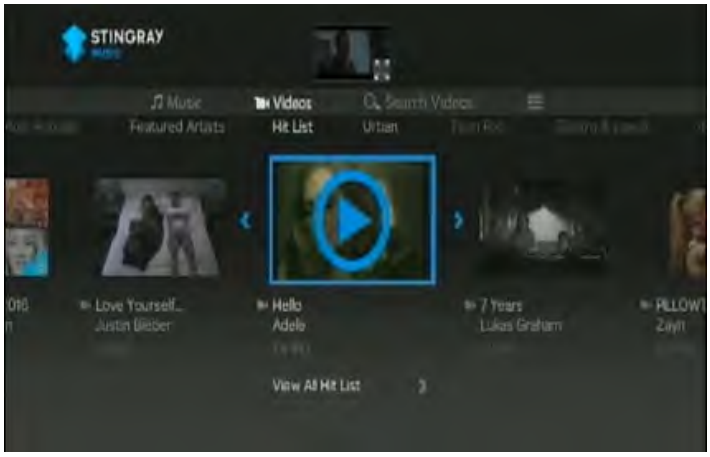


132. In the Stingray Music Method, the set-top-box detects that the user has selected the selectable element (*e.g.*, the thumbnail image for the music video for the song entitled "Close") for requesting the available on-demand video (*e.g.*, the music video for the song entitled "Close").

133. In the Stingray Music Method, in response to detecting that the user has selected the selectable element (*e.g.*, the thumbnail or title identifying the music video for the song entitled "Close"), the set-top-box causes an on-demand video system (*e.g.*, the Stingray UbiquiCAST music content origin server) to transmit to the set-top-box the available on-demand video (*e.g.*, the music video for the song entitled "Close"). Causing the on-demand video system to transmit to the set-top-box the available on-demand video (*e.g.*, the music video for the song entitled "Close") comprises the set-top-box transmitting to the on-demand video system an on-demand request message (*e.g.*, a message indicating that the thumbnail or title identifying the music video for the song entitled "Close" was selected) configured to cause the on-demand video system to transmit to the set-top-box the available on-demand video (*e.g.*, the music video for the song entitled "Close").

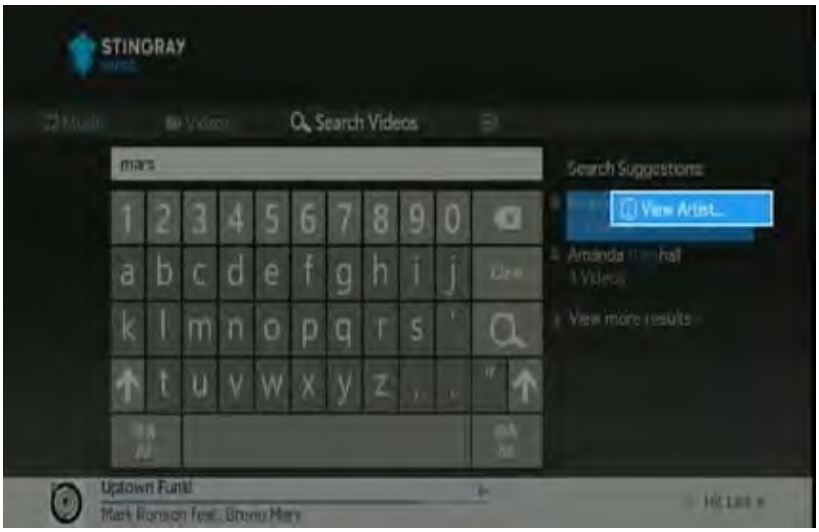
134. Stingray has used and continues to use the Stingray Music Method in a manner that infringes, literally and/or under the doctrine of equivalents, at least claim 14 of the '121 Patent. Specifically, through the Stingray Music Method, Stingray directly, and/or in conjunction with one or more intermediaries or agents (*e.g.*, AT&T, by the AT&T set-top-box) performs a method for providing an on-demand service to a user of a set-top-box (*e.g.*, an AT&T set-top-box).





135. In the Stingray Music Method, the set-top-box (*e.g.*, the AT&T set-top-box) receives via a cable connected to a network (*e.g.*, AT&T's U-verse® distribution network) a media channel (*e.g.*, the "Hit List" media channel) comprising a stream of audio and video data

(*e.g.*, audio corresponding to the song "Uptown Funk!" and video data including song title, artist name, and album art data).



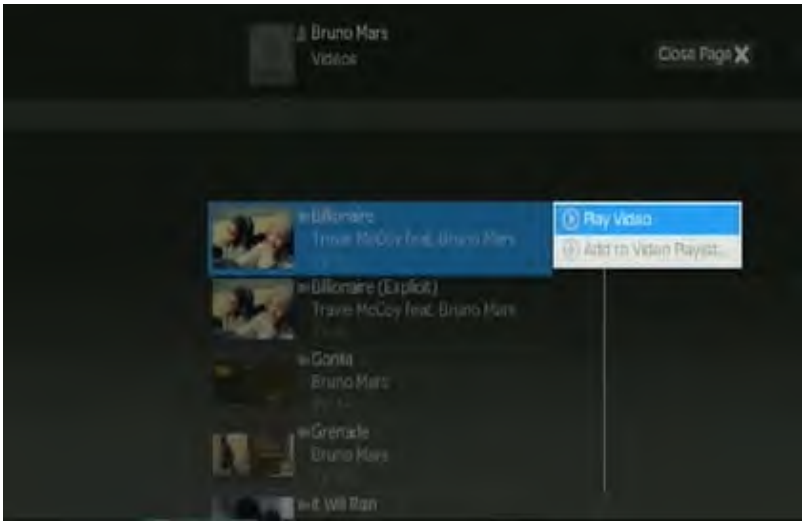
136. In the Stingray Music Method, the set-top-box displays on a display device video corresponding to the video data stream (*e.g.*, video corresponding to the song title, artist name, and album art data for the song "Uptown Funk!").

137. In the Stingray Music Method, while displaying said video (*e.g.*, the video corresponding to the song title, artist name, and album art data for the song "Uptown Funk!"), the set-top-box receives on-demand video information (*e.g.*, search suggestions resulting from the searching on-demand videos for "mars") transmitted via the cable connected to the network.

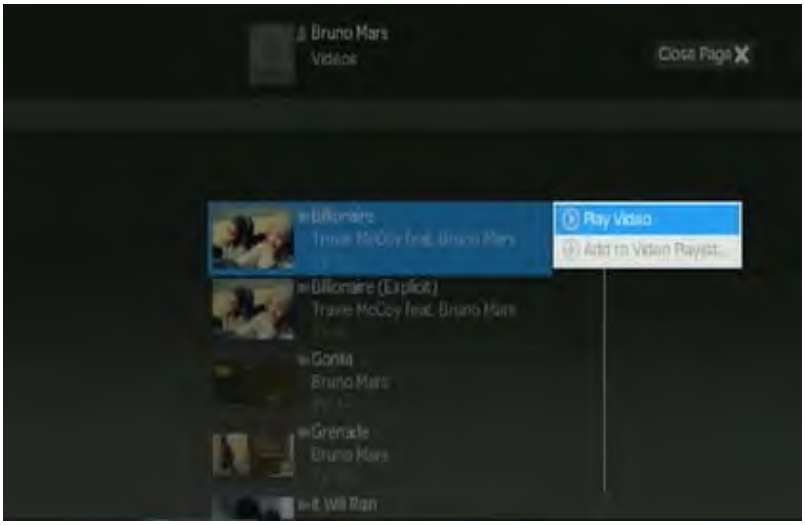
138. In the Stingray Music Method, the set top box displays on the display device, as a result of receiving the on-demand video information (*e.g.*, the search suggestions resulting from the searching on-demand videos for "mars"), a user selectable element (*e.g.*, a user selectable element for the suggested search for Bruno Mars videos) for requesting information identifying a set of available on-demand videos (*e.g.*, the set of 12 available Bruno Mars on-demand videos) while also displaying the video corresponding to the video data stream (*e.g.*, the video corresponding to the song title, artist name, and album art data for the song "Uptown Funk!") so

that the user can see the user selectable element (*e.g.*, the user selectable element for the suggested search for Bruno Mars videos) while also seeing the displayed video corresponding to the video data stream (*e.g.*, the video corresponding to the song title, artist name, and album art data for the song "Uptown Funk!"). The user selectable element (*e.g.*, the user selectable element for the suggested search for Bruno Mars videos) is associated with the set of available on-demand videos (*e.g.*, the set of 12 available Bruno Mars on-demand videos).

139. In the Stingray Music Method, in response to the user of the client system selecting the user selectable element (*e.g.*, the user selectable element for the suggested search for Bruno Mars videos), the set-top-box transmits to an on-demand system (*e.g.*, the Stingray UbiquiCAST music content origin server) an on-demand request message for causing the on-demand system to transmit to the set-top-box the information identifying the set of available on-demand videos (*e.g.*, information identifying the set of 12 available Bruno Mars on-demand videos).



140. In the Stingray Music Method, the set-top-box displays a menu of the available on-demand videos (*e.g.*, a menu of the available Bruno Mars on-demand videos) as a result of receiving the information.



COUNT I
(Infringement of U.S. Patent No. 8,769,602)
(35 U.S. C. § 271(a))

141. Music Choice repeats and re-alleges each and every allegation of paragraphs 1-140 as if fully set forth herein.

142. The ’602 Patent is valid and enforceable.

143. By its use, sale, and/or offer for sale in the United States, and/or importation into the United States, of the Stingray Music System/Method, Stingray has been and is now infringing at least claims 1 and 8 of the ’602 Patent, in the State of Texas, in this judicial district, and elsewhere, in violation of 35 U.S.C. § 271(a).

144. Stingray’s actions are without the consent of Music Choice.

145. Stingray’s infringement has been and is now willful and deliberate. Stingray has and continues to use, sell and/or offer for sale in the United States, and/or import into the United States, the infringing Stingray Music System/Method despite an objectively high likelihood that its actions constituted infringement of the ‘602 Patent. This objectively-defined risk of infringement was known or so obvious that it should have been known to Stingray.

146. As a result of Stingray's actions, Music Choice has suffered and continues to suffer substantial injury. Music Choice has been and will continue to be irreparably harmed unless Stingray's infringement of the '602 Patent is enjoined.

147. Music Choice has been and will continue to be damaged by Stingray's infringement of the '602 Patent, in an amount to be proven at trial.

148. At least by filing and serving the original complaint for patent infringement on June 6, 2016, Music Choice has given Stingray written notice of its infringement.

COUNT II
(Infringement of U.S. Patent No. 9,357,245)
(35 U.S. C. § 271(a))

149. Music Choice repeats and re-alleges each and every allegation of paragraphs 1-148 as if fully set forth herein.

150. The '245 Patent is valid and enforceable.

151. By its use, sale, and/or offer for sale in the United States, and/or importation into the United States, of the Stingray Music System/Method, Stingray has been and is now infringing at least claims 1, 12 and 17 of the '245 Patent, in the State of Texas, in this judicial district, and elsewhere, in violation of 35 U.S.C. § 271(a).

152. Stingray's actions are without the consent of Music Choice.

153. Stingray's infringement has been and is now willful and deliberate. Stingray has and continues to use, sell and/or offer for sale in the United States, and/or import into the United States, the infringing Stingray Music System/Method despite an objectively high likelihood that its actions constituted infringement of the '245 Patent. This objectively-defined risk of infringement was known or so obvious that it should have been known to Stingray.

154. As a result of Stingray's actions, Music Choice has suffered and continues to suffer substantial injury. Music Choice has been and will continue to be irreparably harmed unless Stingray's infringement of the '245 Patent is enjoined.

155. Music Choice has been and will continue to be damaged by Stingray's infringement of the '245 Patent, in an amount to be proven at trial.

156. At least by filing and serving the original complaint for patent infringement on June 6, 2016, Music Choice has given Stingray written notice of its infringement.

COUNT III
(Infringement of U.S. Patent No. 7,320,025)
(35 U.S. C. § 271(a))

157. Music Choice repeats and re-alleges each and every allegation of paragraphs 1-156 as if fully set forth herein.

158. The '025 Patent is valid and enforceable.

159. By its use, sale, and/or offer for sale in the United States, and/or importation into the United States, of the Stingray Music System/Method, Stingray has been and is now infringing at least claims 1 and 8 of the '025 Patent, in the State of Texas, in this judicial district, and elsewhere, in violation of 35 U.S.C. § 271(a).

160. Stingray's actions are without the consent of Music Choice.

161. Stingray's infringement has been and is now willful and deliberate. Stingray has and continues to use, sell and/or offer for sale in the United States, and/or import into the United States, the infringing Stingray Music System/Method despite an objectively high likelihood that its actions constituted infringement of the '025 Patent. This objectively-defined risk of infringement was known or so obvious that it should have been known to Stingray.

162. As a result of Stingray's actions, Music Choice has suffered and continues to suffer substantial injury. Music Choice has been and will continue to be irreparably harmed unless Stingray's infringement of the '025 Patent is enjoined.

163. Music Choice has been and will continue to be damaged by Stingray's infringement of the '025 Patent, in an amount to be proven at trial.

164. At least by filing and serving the original complaint for patent infringement on June 6, 2016, Music Choice has given Stingray written notice of its infringement.

COUNT IV
(Infringement of U.S. Patent No. 9,351,045)
(35 U.S. C. § 271(a))

165. Music Choice repeats and re-alleges each and every allegation of paragraphs 1-164 as if fully set forth herein.

166. The '045 Patent is valid and enforceable.

167. By its use, sale, and/or offer for sale in the United States, and/or importation into the United States, of the Stingray Music System/Method, Stingray has been and is now infringing at least claims 1, 6, 11 and 16 of the '045 Patent, in the State of Texas, in this judicial district, and elsewhere, in violation of 35 U.S.C. § 271(a).

168. Stingray's actions are without the consent of Music Choice.

169. Stingray's infringement has been and is now willful and deliberate. Stingray has and continues to use, sell and/or offer for sale in the United States, and/or import into the United States, the infringing Stingray Music System/Method despite an objectively high likelihood that its actions constituted infringement of the '045 Patent. This objectively-defined risk of infringement was known or so obvious that it should have been known to Stingray.

170. As a result of Stingray's actions, Music Choice has suffered and continues to suffer substantial injury. Music Choice has been and will continue to be irreparably harmed unless Stingray's infringement of the '045 Patent is enjoined.

171. Music Choice has been and will continue to be damaged by Stingray's infringement of the '045 Patent, in an amount to be proven at trial.

172. At least by filing and serving the original complaint for patent infringement on June 6, 2016, Music Choice has given Stingray written notice of its infringement.

COUNT V
(Infringement of U.S. Patent No. 9,414,121)
(35 U.S. C. § 271(a))

173. Music Choice repeats and re-alleges each and every allegation of paragraphs 1-172 as if fully set forth herein.

174. The '121 Patent is valid and enforceable.

175. By its use, sale, and/or offer for sale in the United States, and/or importation into the United States, of the Stingray Music System/Method, Stingray has been and is now infringing at least claims 1, 6, and 14 of the '121 Patent, in the State of Texas, in this judicial district, and elsewhere, in violation of 35 U.S.C. § 271(a).

176. Stingray's actions are without the consent of Music Choice.

177. Stingray's infringement has been and is now willful and deliberate. Stingray has and continues to use, sell and/or offer for sale in the United States, and/or import into the United States, the infringing Stingray Music System/Method despite an objectively high likelihood that its actions constituted infringement of the '121 Patent. This objectively-defined risk of infringement was known or so obvious that it should have been known to Stingray.

178. As a result of Stingray's actions, Music Choice has suffered and continues to suffer substantial injury. Music Choice has been and will continue to be irreparably harmed unless Stingray's infringement of the '121 Patent is enjoined.

179. Music Choice has been and will continue to be damaged by Stingray's infringement of the '121 Patent, in an amount to be proven at trial.

180. At least by filing and serving this complaint for patent infringement, Music Choice has given Stingray written notice of its infringement.

JURY DEMAND

181. Music Choice hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Music Choice prays that the Court enter judgment against Stingray and in favor of Music Choice, as follows:

A. Finding that the '602 Patent, the '245 Patent, the '025 Patent, the '045 Patent, and the '121 Patent were duly and lawfully issued, and are valid and enforceable.

B. Finding that Stingray has infringed one or more of the claims of the '602 Patent, the '245 Patent, the '025 Patent, the '045 Patent, and the '121 Patent;

C. Awarding damages to Music Choice in accordance with 35 U.S.C. § 284, including pre-judgment and post-judgment interest, to compensate Music Choice for Stingray's infringement of the '602 Patent, the '245 Patent, the '025 Patent, the '045 Patent, and the '121 Patent;

D. Ordering preliminary and permanent injunctive relief restraining and enjoining Stingray and its officers, agents, attorneys, employees, and those acting in privity or active concert with Stingray, from infringement of the ’602 Patent, the ’245 Patent, the ’025 Patent, the ’045 Patent, and the ’121 Patent for the full terms thereof;

E. Finding that this case is exceptional pursuant to 35 U.S.C. § 285;

F. Awarding Music Choice its costs and attorneys’ fees; and

G. Awarding Music Choice such other and further relief as this Court deems just and proper.

DATED: August 12, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on June 12, 2016.

/s/ Collin Maloney

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

MUSIC CHOICE,

Plaintiff,

v.

STINGRAY DIGITAL INC. (f/k/a STINGRAY DIGITAL GROUP INC.) and STINGRAY MUSIC USA, INC.,

Defendants.

Civil Action No. 2:16-CV-0586-JRG-RSP

LEAD CASE

Jury Trial Demanded

MUSIC CHOICE'S MOTION TO ENFORCE
SETTLEMENT AGREEMENT

I. INTRODUCTION

On November 26, 2019, Plaintiff Music Choice and Defendants Stingray Digital Inc. and Stingray Music USA, Inc. (collectively "Stingray") agreed to settle these consolidated cases following mediation with the Honorable David J. Folsom. The settlement was based on a detailed term sheet, dated November 8, 2019 (the "Term Sheet"), and Judge Folsom's mediator's proposal of (the "Mediator's Proposal"). Pursuant to this Court's standing order on reporting settlements, the parties jointly reported to the Court that they had reached an agreement in principle on November 26, 2019. Dkt 329, 331. Judge Folsom filed a Report of Mediation, also reporting the settlement. Dkt 331. As a result, the Court released the trial date of Monday, December 9.

Having obtained cancellation of the trial, Stingray then began frustrating the settlement process. Music Choice provided the settlement documentation to Stingray on November 27, incorporating the terms of the Term Sheet. Stingray sat on the documentation for nine days until the afternoon of Friday, December 6, too late to reset the trial, to send Music Choice a markup. The markup contained new terms the parties had not agreed to, including

All efforts to get Stingray to live up to its obligations have failed, and its excuses for non-compliance are incoherent. Indeed, counsel for Stingray has stated that it intends to withdraw, . As a result, Music Choice has no choice but to seek assistance from the Court to enforce the parties' settlement. In light of Stingray's obstructive and bad faith behavior, sanctions are warranted.

II. FACTUAL BACKGROUND

Music Choice filed the present suit on June 6, 2016, asserting claims for infringement of

several patents, including U.S. Patent Nos. 7,320,025 ("'025 patent"), 9,351,045 ("'045 patent") and 9,357,245 ("'245 patent"), among others. Dkt. 1. Stingray countered by filing a separate suit asserting unfair competition and related causes of action on August 30, 2016, and Music Choice counterclaimed for breach of confidentiality agreements entered into by Stingray with Music Choice. The cases were consolidated for discovery and then stayed pending the disposition of several IPRs filed by Stingray. Dkt. 83, 168, 171.

The Patent Trial and Appeal Board ("PTAB") confirmed the validity of several of the asserted claims of the '025 and '045 patents and refused to institute an IPR on the asserted claims of the '245 patent. The Court then lifted the stay on November 26, 2018, and set the trial for December 9, 2019. Dkt. 174. Stingray appealed the PTAB's rulings regarding the '025 and '045 patents (Federal Circuit Appeal Nos. 2019-1285 and 2019-1936) (collectively, the "Pending PTAB Appeals"). Those appeals are fully briefed and are now stayed.

In June 2017, the parties held an unsuccessful mediation before Judge Folsom. *See* Dkt. 140. In March 2019, they tried again, but were unsuccessful. As trial drew closer, in November 2019, Stingray re-started settlement negotiations. Concerned about Stingray's history of re-trading agreements, and to ensure that the scope of the settlement was clear, Music Choice refused to negotiate a dollar figure until there was an agreement as to the non-financial terms of the settlement. Accordingly, on November 8, counsel for Music Choice sent Stingray a detailed proposed term sheet (the "Term Sheet"), stating in the accompanying email that

See Declaration of Martin Black ("Black Decl.") ¶ 2; Exs. 1 (email) and 2 (attached Term Sheet). Among other things, the Term Sheet provides for

With respect to

Ex. 2 at § 1.

Stingray considered Music Choice's email and the accompanying Term Sheet for three days, before responding on November 11 that "that these terms are acceptable. Please

Ex. 3.

The parties then enlisted the assistance of Judge Folsom to mediate the settlement amount.

Ex. 4. On November 26, 2019, both parties accepted the Mediator's Proposal, which created a binding settlement contract consisting of the agreed-upon Term Sheet and the Mediator's Proposal. Ex. 5.

In view of the settlement, the parties then turned to the process of informing the Court of the settlement. During the discussions between counsel with respect to the required certification of an agreement in principle,

Ex. 6.

Id.

(emphasis added).

Stingray then filed a Joint Motion to Stay and Notice of Settlement, advising the Court that the parties had reached an agreement in principle resolving their disputes. Dkt 329. The motion further noted that if any issues arose in finalizing the settlement papers, the parties agreed to submit the issues to the Court for final resolution. *Id.* Judge Folsom also filed a Report of Mediation confirming that the parties had settled. Dkt. 331. The Court entered an order granting the joint motion, taking the case off of its trial calendar for December 9, and staying all other deadlines in the litigation for thirty days to December 27 (rather than through December 20 as requested). Dkt. 330.

On November 27, 2019 (i.e., the day after Stingray's email promising to review a draft settlement agreement "immediately"), Music Choice provided a draft settlement agreement to Stingray's counsel. *Id.* at ¶ 7; Ex. 7.

Neither Stingray nor its counsel registered any objections. Stingray did not advise the Court that its certification of an agreement in principle was incorrect or that the settlement was in jeopardy. Instead, Stingray laid low and decided not to respond for nine days. Finally, on the afternoon of December 6, 2019 (*i.e.*, the Friday before the previously scheduled Monday start of trial),

Exs. 8 (email) and 9 (attachment).

Ex. 9 at § 1, 3-5. That was not the deal.

Ex. 10. All efforts to get Stingray to live up to its obligations have failed, leaving Music Choice in the position that it has released its trial date, and the parties have more litigation ahead.

III. LEGAL STANDARD

Courts have "the power to enforce summarily a settlement agreement reached in a case pending before it." *Mid-South Towing Co. v. Har-Win, Inc.*, 733 F.2d 386, 389 (5th Cir. 1984); *Bell v. Schexnayder*, 36 F.3d 447, 449 (5th Cir. 1994) ("a district court has inherent power to recognize, encourage, and when necessary enforce settlement agreements reached by the parties"). Indeed, district courts routinely enforce settlement agreements arising from patent litigation claims. *See, e.g.*, *Neurovision Med. Prod., Inc. v. Medtronic Pub. Ltd. Co.*, 2017 WL

1247139 (E.D. Tex. 2017) *vacated on other grounds* (Apr. 17, 2017); *Interspiro USA, Inc. v. Figgie Int'l, Inc.*, 815 F. Supp. 1488, 1521 (D. Del. 1993); *MedPointe Healthcare, Inc. v. Kozachuk*, No. CIV.A.04-2019(MLC), 2009 WL 540680, at *6 (D.N.J. Mar. 4, 2009).

Enforcement of a settlement agreement of federal claims, as is the case here, is governed by federal law, not state law. *Macktal v. Secretary of Labor*, 923 F.2d 1150, 1157 n. 32 (5th Cir. 1991); *Mid-South Towing*, 733 F.2d at 389; *Fulgence v. J. Ray McDermott & Co.*, 662 F.2d 1207, 1209 (5th Cir. 1981) (federal courts are competent to determine whether a settlement is valid without resort to state law when the case deals with the operation of a Congressional statutory scheme). Under federal law, a party cannot agree to a settlement and then repudiate it when presented with formal settlement papers. *Fulgence*, 662 F.2d at 1209 (5th Cir. 1981) (once a party authorizes a settlement, "that party remains bound by the terms of the agreement" and cannot "change[] his mind when presented with the settlement documents"); *Weaver v. World Finance Corp. of Texas*, 2010 WL 1904561, at *2 (N.D. Tex. May 12, 2010) ("A district court may exercise its discretion to enforce a settlement agreement where one party to a suit has initially agreed to a settlement but later refused to execute a formal agreement reciting the terms of the settlement."). Moreover, federal law is unambiguous that settlement agreements need not be reduced to final signed writings to be enforceable. *Quesada v. Napolitano*, 701 F.3d 1080, 1084 n. 10 (5th Cir. 2012); *Harmon v. Journal Pub. Co.*, 476 F. App'x 756, 757 (5th Cir. 2012). *See also In re Deepwater Horizon*, 786 F.3d 344, 357 (5th Cir. 2015) ("courts routinely enforce settlement agreements even where the precise wording ... has not been finalized") (internal quotations and citation omitted).

IV. ARGUMENT

A. Stingray Agreed to a Binding and Enforceable Settlement Agreement Consisting of the Term Sheet and the Mediator's Proposal

It is undisputed that

Exs. 4, 5 (emphasis added). The previously agreed upon Term Sheet provides for payment as a

Ex. 2 at 1. It also unambiguous with respect to

Ex. 2 at 1-2.

Ex. 3. Stingray never sought to redline the Term Sheet or modify it in any way. Before Stingray reported to the Court that the case had been settled, it acceded to Music Choice's demand that the customary 30-day stay be shortened, for the express reason that Music Choice wanted

Ex. 6. Even after receiving a draft settlement agreement on November 27 that reflected the terms in the Term Sheet, Stingray waited until the afternoon of Friday, December 6 to begin renegotiation,

Ex. 9 at § 1, 3-5. At that point, it was too late for Music Choice to request the Court to empanel a jury on the parties' scheduled trial date, Monday, December 9.

Under federal contract law, acceptance of an offer occurs when there is "manifestation of

assent that occurs in any reasonable manner." *Chen v. Highland Capital Mgmt., L.P.*, 2012 WL 5935602, *2 (N.D. Tex. Nov. 27, 2012). Stingray unequivocally accepted the offered Term Sheet as setting the non-monetary terms and the Mediator's Proposal as to the monetary amount to be paid, thereby creating an enforceable settlement agreement between the parties. *Simon v. Barrett Steel Energy Prod., Inc.*, No. CV H-17-3831, 2018 WL 2010300, at *2 (S.D. Tex. Apr. 30, 2018) ("A meeting of the minds on all essential terms of a settlement agreement is generally present where the parties have agreed upon the monetary amount of the settlement payment and the fact that plaintiffs will release specific claims."). It is of no consequence that the parties have yet to sign formal settlement papers, as federal law and this Court regularly recognize the formation of enforceable settlement agreements through email exchanges. *See Neurovision Med. Prod., Inc. v. Medtronic Pub. Ltd. Co.*, 2017 WL 1247139 (E.D. Tex. 2017) (finding email exchange created an enforceable agreement prior to final written settlement, where plaintiff stated "we accept your offer" and email summarized terms, including payment amount); *Lozano v. Metro. Transit Auth. of Harris Cty.*, No. CV H-14-1297, 2016 WL 3906295, at *7 (S.D. Tex. July 19, 2016) (finding that through an email exchange, "the parties made a binding settlement agreement, and [one party]'s subsequent refusal to sign the formal settlement documents does not void that agreement."); *McDonald v. Kansas City S. Ry. Co.*, No. CV 16-15975, 2017 WL 1709353, at *5 (E.D. La. May 3, 2017) (holding that the parties "entered into a binding settlement agreement" when "[defendant] emailed plaintiff to 'confirm' the parties' 'verbal agreement to settle'" and "[p]laintiff responded: 'This is acknowledgment of receipt of the proposed settlement…which I accept.'").[1]

[1] It is inconsequential that Stingray's counsel, as opposed to Stingray, agreed to the Mediator's Proposal and the Term Sheet. Under federal law, a party's attorney of record is presumed to have settlement authority. *See Quesada*, 701 F.3d at 1083; *Mid-South Towing*, 733 F.2d at 392.

The Term Sheet is detailed, and the Court need go no further than the written documents to determine the scope of the agreement. It is noteworthy, however, that on November 26, after agreeing to the Mediator's Proposal, the parties had an explicit exchange on

Ex. 6 (emphasis added).

Id. Later that day, Stingray filed a Joint Motion to Stay and Notice of Settlement, certifying that the parties had reached an agreement in principle resolving their disputes. Dkt. 329.

On these facts, it is plain that the parties entered into an enforceable agreement settling the litigation and equally clear that payment of

Music Choice respectfully requests that the Court hold Stingray to its commitments and enforce the parties' settlement, consisting of the Term Sheet and the Mediator's Proposal.

B. Stingray's Behavior Warrants Court Sanctions

Stingray's refusal to abide by the parties' settlement terms is frivolous and in bad faith.[2] The Term Sheet and Judge Folsom's Mediator's Proposal are unambiguous, and Stingray unequivocally accepted them. Neither reflect the terms that Stingray now seeks to engraft onto the parties' agreement. Stingray had ample time to inform Music Choice and the Court if it believed there had been some mistake with regard to the terms in the Term Sheet. Stingray waited until the business day before trial to raise its objections, when it was too late to empanel a jury the following Monday. These tactics have increased the cost of litigation and caused unnecessary proceedings before the Court.

Music Choice bargained for the end of litigation, not a new round of litigation. This Court, which has one of the busiest patent dockets in the country, has developed a thoughtful procedure for ensuring the prompt reporting of settlements, without which the smooth running of the District's patent docket would be seriously impeded. It is imperative both as a matter fairness and judicial economy that the Court ensure that violations of the Court's process are not tolerated.

Here, fees are awardable against Stingray on two grounds.

First, because this case falls under the patent jurisdiction of the Court, 35 U.S.C. § 285 justifies an award of fees. Refusing to abide by a settlement is grounds for making an exceptional case finding justifying the award of fees. *Fitness IQ, LLC v. TV Prod. USA, Inc.*, No.

[2] This is not the first time that Stingray has attempted to repudiate its unequivocal commitments to Music Choice. During the course of litigation, Stingray agreed—in no uncertain terms—to limit its invalidity defenses to particular prior art references in advance of expert discovery. On the eve of trial, however, Stingray attempted to resurrect those disclaimed prior art references. Judge Payne saw through Stingray's gamesmanship and found that "the agreement evidenced in the emails is clear." Dkt. 317 at 2-3. The same is true here.

10CV2584 WMC, 2012 WL 13175920, at *6 (S.D. Cal. Sept. 14, 2012) (finding a case exceptional and awarding attorney's fees based on the "[defendant's] unreasonable conduct throughout settlement negotiations and in the post-settlement dispute" and their continued violation of the settlement agreement.)

Second, "monetary sanctions are appropriate" under the court's inherent power when a party "has wasted the resources of the Court, as well as the time and efforts of [plaintiff]'s counsel and the Mediator." *Virtual Fleet Mgmt., LLC v. Land Air Sea Sys., Inc.*, No. 2:16-CV-01108-JRG, 2017 WL 10276709, at *6 (E.D. Tex. Nov. 29, 2017). "When a party's deplorable conduct is not effectively sanctionable pursuant to an existing rule or statute, it is appropriate for a district court to rely on its inherent power to impose sanctions." *Carroll v. The Jaques Admiralty Law Firm, P.C.*, 110 F.3d 290, 292 (5th Cir.1997); *Chambers v. NASCO, Inc.*, 501 U.S. 32, 46, 111 S. Ct. 2123, 2134, 115 L. Ed. 2d 27 (1991).

District courts regularly impose sanctions for similar behavior and bad faith tactics requiring motion practice to enforce a settlement. *See, e.g.*, *Saeed v. Kamboj*, No. CV 17-13427, 2019 WL 3526710, at *9 (E.D. La. June 21, 2019) (ordering defendants to pay plaintiffs reasonable attorneys' fees in filing the Motion to Enforce Settlement Agreement for defendant's unjustified delay and refusal to abide by the agreement); *Palmer v. Cty. of Nassau*, 977 F. Supp. 2d 161, 167 (E.D.N.Y. 2013) (granting a party's motion to enforce the settlement agreement and imposing monetary sanctions on counsel when they "continued to ignore requests by [opposing counsel] to resolve this matter after the settlement had been reached."). In such circumstances, it is appropriate to "sanction in the amount of [] attorneys' fees associated with filing and briefing the motion to enforce the settlement agreement" for a party's refusal to abide by settlement terms. *Travelers Indem. Co. v. Excalibur Reinsurance Corp.*, No. 3:13-CV-293 AWT, 2014 WL

1094451, at *4 (D. Conn. Mar. 19, 2014); *see also Farmer v. Banco Popular of N. Am.*, 791 F.3d 1246, 1250 (10th Cir. 2015) (upholding District Court's award of fees and costs for a party's "delay in executing the settlement"); *Walker v. Health Int'l Corp.*, 845 F.3d 1148, 1154 (Fed. Cir. 2017) (affirming lower court's award of attorney's fees for counsel's act of continuing to litigate the case after the settlement agreement, finding that counsel's "actions after the settlement were 'vexatious' and sufficient for awarding fees").

Stingray's actions are inexcusable and have wasted the valuable time and resources of the Court and the parties. Music Choice thus urges this Court to impose monetary sanctions on Stingray in the amount of the reasonable costs incurred in filing this Motion and enforcing the settlement agreement.

V. CONCLUSION

For the reasons set forth above, Music Choice respectfully asks the Court to enforce the parties' settlement agreement consisting of Judge Folsom's Mediator's Proposal and the Term Sheet, and impose monetary sanctions on Stingray pursuant to 35 U.S.C. § 285, and the Court's inherent power to do so. In particular, the Court should enter the proposed order submitted herewith, which provides among other things:

1. A declaration that the parties entered into an enforceable settlement agreement based on the terms of the Term Sheet and the Mediator's Proposal of November 25, 2019;

2. An order of specific performance, requiring Stingray to pay Music Choice ;

3. An order granting Music Choice's motion for sanctions in the amount of the attorneys' fees it has incurred in seeking to enforce the parties' settlement. Music Choice shall file an accounting of such fees within 14 days from the entry of the Order.

Date: December 20, 2019

Respectfully submitted,

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CERTIFICATE OF AUTHORIZATION TO FILE UNDER SEAL

I certify that the foregoing document and attachments thereto are authorized to be filed under seal pursuant to the Protective Order entered in this case.

/s/ Martin J. Black
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing documents were served on the following counsel of record via electronic mail on December 20, 2019.

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Page 1614 of 1912 (IPR2025-00350)
Stingray Group Inc. et al v. Hernandez-Mondragon

REDACTED

HIGHLY CONFIDENTIAL-ATTORNEY'S EYES ONLY

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

MUSIC CHOICE, *Plaintiff*, v. STINGRAY GROUP INC. (f/k/a STINGRAY DIGITAL GROUP INC.) and STINGRAY MUSIC USA, INC., *Defendants*.	§ § § § § § § § § § § §	C.A. No: 2:16-cv-00586-JRG-RSP (Lead Case) **FILED UNDER SEAL**

DEFENDANTS' *DAUBERT* MOTION TO EXCLUDE
CERTAIN OPINIONS AND TESTIMONY OF
MUSIC CHOICE'S DAMAGES EXPERT, DR. KEITH R. UGONE

TABLE OF CONTENTS

I. INTRODUCTION 1
II. BACKGROUND 2
A. Background of this Action 2
B. Music Choice and Its Music Services 3
C. Stingray and Its Music Services 4
D. The Patents-in-Suit 5
E. Dr. Ugone's Damages Reports 5
F. Dr. Ugone's Report On Commercial Success 6
III. ARGUMENT 6
A. Legal Standard 6
B. Dr. Ugone's Opinions With Respect To Lost Profits Should Be Excluded 7
1. Dr. Ugone Incorrectly Applied Panduit Factor 2 In Calculating Lost Profits With Respect To The Visual Complement Patent 8
2. Dr. Ugone's Calculation Of Lost Profits With Respect To The VOD Linking Patents Is Speculative And Unreliable 9
C. Dr. Ugone's Opinions With Respect To Price Erosion Should Be Excluded As Flawed, Speculative, And Unreliable 12
D. Dr. Ugone's Opinions With Respect To Commercial Success Should Be Excluded As Unreliable And Based On A Flawed Methodology 14
IV. CONCLUSION 15

TABLE OF AUTHORITIES

Page(s)

Cases

Crystal Semiconductor Corp. v. TriTech Microelectronics Int'l, Inc.,
246 F.3d 1336 (Fed. Cir. 2001).....11, 12

Datatreasury Corp. v. Wells Fargo & Co.,
No. 2:06-cv072, 2010 U.S. Dist. LEXIS 150694 (Feb. 25, 2010 E.D. Tex.).....14, 15

Daubert v. Merrell Dow Pharm., Inc.,
509 U.S. 579 (1993).....6, 15

Engineered Prod. Co. v. Donaldson Co., Inc.,
147 Fed.Appx. 979 (Fed. Cir. 2005).....12, 14

Ericsson, Inc. v. Harris Corp.,
2001 U.S. Dist. LEXIS 26485 (E.D. Tex. Mar. 13, 2001).....14

Knight v. Kirby Inland Marine, Inc.,
482 F.3d 347 (5th Cir. 2007).....7

Kumho Tire Co. v. Carmichael,
526 U.S. 137 (1999).....6

Moore v. Int'l Paint, LLC,
547 Fed.Appx. 513 (5th Cir. 2013).....12

O2 Micro Int'l Ltd. v. Beyond Innovation Tech.,
2005 U.S. Dist LEXIS 47075 (E.D. Tex. Dec. 15, 2005).....10

Panduit Corp. v. Stahlin Bros. Fibre Works, Inc.,
575 F.2d 1152 (6th Cir. 1078).....7, 8

Presido Components, Inc. v. Am. Techn. Ceramics Corp.,
875 F.3d 1369 (Fed. Cir. 2017).....7, 8

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2012 U.S. Dist LEXIS 188907 (C.D. Cal. Feb. 24, 2012).....9, 12, 13

SynQor, Inc. v. Artesyn Techs., Inc.,
No. 2:07-cv-497-TJW-CE, 2010 U.S. Dist. LEXIS 144244 (Dec. 13, 2010 E.D. Tex.).....7

U.S. v. Valencia,
600 F.3d 389 (5th Cir. 2010) 7

Other Authorities

Fed. R. Evid. 702 6

REDACTED

HIGHLY CONFIDENTIAL-ATTORNEY'S EYES ONLY

Defendants Stingray Group Inc. (f/k/a Stingray Digital Group Inc.) and Stingray Music USA, Inc. (collectively, "Stingray") respectfully move to exclude certain opinions and testimony of Plaintiff Music Choice's ("MC") damages expert, Dr. Keith R. Ugone.

I. INTRODUCTION

This is a patent infringement action involving increasingly irrelevant technology—linear audio and video on demand ("VOD") music channels transmitted to consumers by cable and satellite television providers. The number of cable and satellite television subscribers is rapidly declining each year. Nonetheless, MC's damages expert, Dr. Keith R. Ugone, opined that MC suffered over [redacted] in lost profits and price erosion damages based on the flawed assumption that, had Stingray not offered purportedly infringing products, the prices paid for MC's services by its customers—i.e., the same cable and satellite television providers whose subscriber counts are ***decreasing***—would not have changed. Dr. Ugone did not consider and/or discuss any market forces in making this assumption. Similarly, Dr. Ugone did not consider and/or discuss the ample evidence of [redacted] several years before Stingray even entered the market with its allegedly infringing technology. Instead, Dr. Ugone simply looked at what MC's customers agreed to pay immediately prior to Stingray's alleged infringement, and determined that was the only evidence needed to support his damages calculations. Accordingly, Dr. Ugone's lost profits and price erosion damages opinions are flawed, speculative, unreliable and should be excluded.

In addition, Dr. Ugone should be precluded from testifying about commercial success in support of MC's contention that U.S. Patent No. 9,357,245 ("the '245 patent") is not obvious over the

prior art.[1] Dr. Ugone's opinion is devoid of any evidence that MC's services purportedly covered by the '245 patent, namely, MC's linear audio music channels with visual complements, achieved any measurable level of success, as required by Federal Circuit law. For example, Dr. Ugone did not conduct a market share analysis or provide financial or sales data corresponding to MC's linear audio music channels. Accordingly, Dr. Ugone's methodology for determining commercial success, as it relates to obviousness of the '245 patent, is flawed and should be excluded.

II. BACKGROUND

A. Background of this Action

Until recently, linear audio and/or VOD music channels were primarily provided to consumers (hereafter, "subscribers") by multichannel video programming distributors ("MVPDs"), i.e., cable and satellite television companies. (*See* Expert Report of Keith R. Ugone, Ph.D, dated September 27, 2017 ("Report") (Ex. 1), ¶2). In order to do so, an MVPD executes a contract with a music service provider (e.g., MC, Stingray, DMX, XMSirius), where the MVPD agrees to pay the music service provider a monthly rate per subscriber ("subscriber rate") in exchange for one or more music services, including, for example, linear audio and/or VOD music channels, among others. (*See, e.g.,* Report (Ex. 1), ¶¶40-41, 62). The linear audio and/or VOD music channels are then provided by each MVPD to its respective subscribers as part of a larger cable package, which includes several hundred additional television channels. (*Id.*) There is no evidence in the record that any subscriber: (1) has chosen an MVPD based on the music channels offered by the MVPD; or (2) has cancelled his/her subscription based on the music channels offered (or not offered) by the MVPD. (Deposition Transcript of Keith Ugone, Ph.D, dated May 10, 2019 ("Ugone Tr.") (Ex. 2), 117:17-118:6, 159:1-6).

[1] In view of the related IPR proceedings, the parties agree that there are no prior art invalidity arguments remaining with respect to the other two patents-in-suit. Dr. Ugone should, therefore, be precluded from providing any commercial success testimony as to those patents as well.

Typically, each MVPD executes a contract with only one music services provider at a time for a period of several years. (Report (Ex. 1), ¶¶40-41, 62). At the end of the contract, the MVPD can either (1) execute a contract extension with the existing provider, or (2) execute a new contract with another provider. Regardless of whether an MVPD executes a contract extension or a new contract, it is common for subscriber rates to change at the end of each contract. (*See, e.g.,* Report (Ex. 1), ¶¶67-71).

The market for MVPDs, and consequently the music services market, is changing. (Supplemental Rebuttal Expert Report of Michele Riley ("Riley Report") (Ex. 3), ¶¶81-83 (citing www.nasdaq.com/article/cord-cutting-continues-to-impact-pay-tv-services-ott-a-boon-cm834151 (Ex. 20))). Subscribers no longer need to subscribe to an MVPD in order to have access to television programming, including for example, audio and VOD music channels. (*Id.*) Now, subscribers have access to the same programming through a variety of sources, including, for example, Netflix, HBO GO, and Amazon Prime, among others. (*See id.*) Thus, the number of MVPD subscribers is declining each year. (*Id.*)

B. Music Choice and Its Music Services

MC is headquartered in Horsham, Pennsylvania and is owned by several MVPDs, including Cox Communications, Inc., Comcast Corporation, Charter Communications, and Time Warner Inc. (collectively, the "Partner MVPDs"). (Report (Ex. 1), ¶31). [redacted] (Deposition Transcript of Christina Tancredi, dated September 15, 2017 ("Tancredi Tr.") (Ex. 4), 296:21-298:13).

MC launched linear audio music channels in 1994. (Report (Ex. 1), ¶29). Since then, it has offered several audio and VOD music channel services. (*Id.*, ¶¶43-44, Table 4). Not all of MC's services are covered by the patents-in-suit. (*Compare*, Report (Ex. 1), Table 4 to R12-14 to the Russ Invalidity Report (Exs. 5-7). Some of the services offered by MC are its (1) Audio Service; (2) SWRV

Service; and (3) VOD Service. ([redacted]) (Ex. 8) at MC-Stingray00138162-163). MC's Audio Service consists of linear audio music channels (*id.*); its SWRV Service which consists of MC's linear music video networks (*id.*); and its VOD Service which consists of video-on-demand music programming (*id.*). The MVPDs that MC contracts with receive one or more of these services. (*See, e.g., id.*)

C. Stingray and Its Music Services

Stingray is a "world-leading provider" of music services to MVPDs, including Stingray Music (linear audio music), Stingray Music Videos (VOD), Stingray Concerts, and Stingray Karaoke. (www.stingray.com/about-us/who-we-are (Ex. 21)). Stingray's linear audio music channels are provided through its UbiquiCAST system. (Report (Ex. 1), ¶47) Stingray's linear audio music channels include "on screen enhancements," [redacted] (*Id.*, ¶¶48-49). Stingray's linear audio service, [redacted] is a music service that enables an MVPD to stream linear audio music along with an image to subscribers' televisions. (*Id.*, ¶48, Fig. 5). [redacted]. (*Id.*, ¶48; Riley Report (Ex. 3), ¶9). Stingray provides its linear audio service [redacted] to over 300 MVPDs in the United States. (STINGRAY118548 (Ex. 9)). [redacted] (Ugone Tr. (Ex. 2), 163:4-164:19, 168:19-169:14; [redacted].

Stingray also offers MVPDs music video TV channels through [redacted].

(STINGRAY118548 (Ex. 9)). Although Stingray provides at [redacted], [redacted]t (the "Stingray Music TV App"). (*Id.*; Report (Ex. 1), ¶49). Stingray first provided [redacted] with the accused Stingray Music TV App in March 2015. ([redacted] (Ex. 11), pp. 1, 9); [redacted] (Ex. 12)). Prior to March 2015, Stingray did not offer or provide any music video TV channels to MVPDs that are accused of infringing the patents-in-suit. (*See id.*; Report (Ex. 1), ¶¶62, 88).

D. The Patents-in-Suit

MC filed this action on June 6, 2016, and thereafter, filed its third amended complaint on March 17, 2017, asserting infringement of five patents. (Dkt. 1, Dkt. 84). After a stay of this action pending IPRs, three patents-in-suit remain: U.S. Patent No. 9,357,245 (the "'245 patent" or the "Visual Complement Patent"), U.S. Patent No. 7,320,025 (the "'025 patent"), and U.S. Patent No. 9,351,045 (the "'045 patent"). (Dkt. 173.) The '245 patent is directed to enhancing the visual display a user sees when tuned to a broadcast music channel on his or her television set with graphics, e.g., album art, relating to the song being played. (*See e.g.*, '245 patent (Dkt. 1-2), 4:54-62.)

The '025 and '045 patents (collectively, the "VOD Linking Patents") are related patents and share a common specification. (*See* '025 patent (Dkt. 1-3); '045 patent (Dkt. 1-4)). The purported invention of the VOD Linking Patents is enabling users to select and watch music videos of their choosing while the music and/or video currently on the screen continues to play. ('025 Patent (Dkt. 1-3, 1:46-56; Report (Ex. 1), ¶42).

E. Dr. Ugone's Damages Reports

Dr. Ugone submitted a damages report on September 27, 2017 ("Report") (Ex. 1), and a post-stay supplemental report on April 12, 2019 ("Supplemental Report") (Ex. 13). In the Report, Dr. Ugone

concluded that MC suffered (1) lost profits due to Stingray's alleged infringement of both the Visual Complement Patent and the VOD Linking Patents; and (2) price erosion due to Stingray's alleged infringement of the VOD Linking Patents.[2] (Report (Ex. 1), Table 2; Ugone Tr. (Ex. 2), 70:13-24). Dr. Ugone did not provide a calculation for any reasonable royalty damages. (*See, generally, Id.*) In the Supplemental Report, Dr. Ugone updated the damages calculations, but his methodologies did not change. (Supplemental Report (Ex. 13), Table 2, ¶¶4-17).

F. Dr. Ugone's Report On Commercial Success

In addition, Dr. Ugone prepared a report on commercial success in support of MC's position that the patents-in-suit are non-obvious. (("Commercial Success Report") (Ex. 14), Ugone Tr. (Ex. 2), 149:9-25). Despite not providing a market share analysis, let alone any evidence of the success of MC's linear audio music channels (*See* Commercial Success Report (Ex. 14), ¶¶37-45; Ugone Tr. (Ex. 2), 121:10-19, 253:4-16), Dr. Ugone concluded that [redacted] (Commercial Success Report (Ex. 14), ¶37).

III. ARGUMENT

A. Legal Standard

An expert witness may provide opinion testimony if "(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the facts of the case." Fed. R. Evid. 702; *see also Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 149 (1999); *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 592-93 (1993). "Rule 702 demands that expert

[2] At that time, there were three VOD Linking Patents in suit—[redacted] (Report (Ex. 1), ¶11, Table 2; Ugone Tr. (Ex. 2), 75:22-25.)

testimony related to scientific, technical or other specialized knowledge, which does not include unsubstantiated speculation and subjective beliefs." *SynQor, Inc. v. Artesyn Techs., Inc.*, No. 2:07-cv-497-TJW-CE, 2010 U.S. Dist. LEXIS 144244 (Dec. 13, 2010 E.D. Tex.). "The reliability analysis applies to all aspects of an expert's testimony: the methodology, the facts underlying the expert's opinion, and the link between the facts and the conclusion." *Knight v. Kirby Inland Marine, Inc.,* 482 F.3d 347, 355 (5th Cir. 2007). Although the Fifth Circuit and other courts have identified various factors that the district court may consider in determining whether an expert's testimony should be admitted, the nature of the factors that are appropriate for the court to consider is dictated by the ultimate inquiry – whether the expert's testimony is sufficiently reliable and relevant to be helpful to the finder of fact and thus warrant admission at trial. *U.S. v. Valencia*, 600 F.3d 389, 424 (5th Cir. 2010).

B. Dr. Ugone's Opinions With Respect To Lost Profits Should Be Excluded

Dr. Ugone opines that MC should be awarded [redacted] in lost profits for infringement of the Visual Complement Patent and [redacted] in lost profits for infringement of the VOD Linking Patents. (Supplemental Report (Ex. 13), Table 2.) "To recover lost profits, the patentee bears the burden of proof to show a reasonable probability that but for infringement, it would have made the sales that were made by the infringer." *Presido Components, Inc. v. Am. Techn. Ceramics Corp.*, 875 F.3d 1369, 1380 (Fed. Cir. 2017) (citations omitted). "But-for causation can be proven using the test given in *Panduit Corp. v. Stahlin Bros. Fibre Works, Inc.,* 575 F.2d 1152 (6th Cir. 1078)." *Id.* "The four-factor *Panduit* test requires the patentee to show: (1) demand for the patented product; (2) an absence of acceptable, noninfringing substitutes; (3) manufacturing and marketing capability to exploit the demand; and (4) the amount of profit that would have been made." *Id.* (citing *Panduit*, 575 F.2d at 1156). However, Dr. Ugone's application of *Panduit* factors to the facts of this case is unreliable, and

therefore, Dr. Ugone's lost profits opinions should be excluded.

1. Dr. Ugone Incorrectly Applied *Panduit* Factor 2 In Calculating Lost Profits With Respect To The Visual Complement Patent

Dr. Ugone does not dispute that the second *Panduit* factor is the "absence of acceptable, noninfringing substitutes." *Presido*, 875 F.3d at 1380; Report (Ex. 1), n. 92. Nonetheless, in providing his opinions, Dr. Ugone characterizes the second *Panduit* factor differently, namely, as whether [redacted] (Report (Ex. 1), ¶53). While Dr. Ugone alleges that [redacted] (*id.*, n. 92), Dr. Ugone did not perform this analysis with respect to MC's purported lost profits resulting from Stingray providing [redacted].

Dr. Ugone understands that the Visual Complement Patent teaches, *inter alia*, "providing on-screen visual complements, such as album art or artist images associated with the song that is playing . . . within linear [audio] music channels." (Report (Ex. 1), ¶42.b). Dr. Ugone further understands that [redacted]. (Report (Ex. 1), ¶¶47-49). Nonetheless, Dr. Ugone opines that [redacted] is not an acceptable non-infringing substitute because of "the importance of the features and benefits enabled by the Visual Complement Patent." (Supplemental Report, (Ex. 13) ¶22.a.). But this is not the correct methodology for determining whether acceptable non-infringing alternatives exist under *Panduit*. Rather, "[t]he correct inquiry under *Panduit* is whether a non-infringing alternative would be acceptable compared to the ***patent owner's product*** . . ." *Presido*, 875 F.3d at 1381 (emphasis added). Dr. Ugone did not determine whether Stingray's [redacted] is an acceptable non-infringing alternative ***as compared to MC's linear audio music channels***. Had he done this analysis, he would have determined that it is. (*See* Ugone Tr.

(Ex. 2), 163:4-164:18). Indeed, Dr. Ugone does not dispute that [redacted]. (Ugone Tr. (Ex. 2), 163:4-164:19). [redacted] (*Id.*)

Accordingly, Dr. Ugone's determination that MC should be awarded lost profits for Stingray's alleged infringement of the Visual Complement Patent is flawed and unreliable, and his opinions with respect to that determination should be excluded. *See Spellbound Dev. Group Inc. v. Pac. Handy Cutter Inc.*, 2012 U.S. Dist LEXIS 188907 at *3 (C.D. Cal. Feb. 24, 2012) (excluding expert's damages calculation because the expert, *inter alia*, provided no basis for his conclusion that there were no acceptable non-infringing alternatives).

2. Dr. Ugone's Calculation Of Lost Profits With Respect To The VOD Linking Patents Is Speculative And Unreliable

Dr. Ugone's lost profits analysis relating to the VOD Linking Patents is based on an assumption that is speculative and flawed and, as such, should be excluded. Dr. Ugone determined that [redacted] as a result of Stingray's alleged infringement of the VOD Linking Patents and calculated that MC lost over [redacted] as a result. (Supplemental Report (Ex. 13), Table 2). Dr. Ugone's calculation is based on the assumption that [redacted]. (Report (Ex. 1), ¶¶80-83; Supplemental Report (Ex. 13), ¶8; Ex. 7 to Supplemental Report ("[redacted] Lost Profits Calculation") (Ex. 15)). But Dr. Ugone provides no basis for his assumption.

During his deposition, Dr. Ugone explained that he chose the monthly subscriber rate of [redacted] simply because it was the agreed upon monthly rate in [redacted] contract with MC prior to [redacted] contract with Stingray. (Ugone Tr. (Ex. 2), 179:9-180:25). However, Dr. Ugone failed to consider and/or discuss the plethora of evidence demonstrating that monthly subscriber rates for music

services purportedly covered by the VOD Linking Patents varies, including that: [redacted] (Ex. 16) at MC-Stingray00347118, MC-Stingray00347187; Report (Ex. 1), Table 4). Tellingly, when questioned at his deposition, Dr. Ugone could not explain the discrepancy between this evidence and his assumed [redacted] monthly subscriber rate. (Ugone Tr. (Ex. 2), 182:5-186:23).

The speculative nature of Dr. Ugone's assumption is further compounded by the fact that there is no evidence that [redacted] for a music service covered by the VOD Linking Patents, including during the damages period.[3] *See O2 Micro Int'l Ltd. v. Beyond Innovation Tech.*, 2005 U.S. Dist LEXIS 47075 (E.D. Tex. Dec. 15, 2005) (damages expert's report lacked sufficient analysis, where price was 4-times higher than any price for competing products during the damages period). Importantly, Dr. Ugone's assumed monthly subscriber rate of [redacted] (Ex. 17) at MC-Stingray00138355). Indeed, the [redacted]:

[redacted]

[3] The damages period for the VOD Linking Patents is March 2015 to August 2019. (Ugone Tr. 75:11-17.)

[redacted]

(*Id.*) (emphasis added). But Dr. Ugone did not even attempt to determine the amount of the [redacted]

Moreover, Dr. Ugone's assumption that the monthly subscriber rate will remain unchanged contradicts his assumption regarding price erosion that [redacted]. (Ugone Tr. (Ex. 2), 194:19-195:16) For example, MC's Chief Operating Officer, Ms. Christina Tancredi, testified that [redacted]. (Tancredi Tr. (Ex. 4), 296:21-298:13). Dr. Ugone was aware of this testimony (Ex. 3 to Supplemental Report ("Supplemental Information Considered") (Ex. 18), p. 1), but did not explain why [redacted]. That Dr. Ugone only assumed that [redacted] in the context of price erosion damages, but not lost profits damages, speaks to the unreliability of Dr. Ugone's damages calculation.

Finally, that Dr. Ugone's assumed monthly subscriber rate is speculative is further supported by the fact that Dr. Ugone's damages reports are devoid of any discussion regarding price elasticity including, for example, the effect that lower MVPD subscriber counts may have on [redacted] willingness to continue paying a monthly subscriber rate of [redacted]. (Ugone Tr. (Ex. 2), 181:9-15); *see also Crystal Semiconductor Corp. v. TriTech Microelectronics Int'l, Inc.*, 246 F.3d 1336, 1359-60 (Fed. Cir. 2001) (excluding jury award for lost profits and price erosion damages because, *inter alia*, "the record does not contain sufficient evidence to show the reaction of the market if, 'but for' infringement, plaintiff would have tried to charge more" for its product). Dr. Ugone acknowledged that [redacted] subscriber count is decreasing each year (*see, e.g.,* [redacted] (Ex.

15)). Nonetheless, Dr. Ugone did not explain why, in the face of decreasing subscribers, [redacted] would be willing to pay MC a monthly subscriber rate that is [redacted] than what it agreed to pay Stingray for a similar type of music service.

Dr. Ugone's calculation of the lost profits suffered by MC due to Stingray's alleged infringement of the VOD Linking Patents is based on a speculative assumption, and, therefore, his opinions as to these damages should be excluded. *See Moore v. Int'l Paint, LLC*, 547 Fed.Appx. 513, 516 (5th Cir. 2013) (excluding expert's testimony because he "made a number of . . . assumptions that, while not strictly inconsistent with the evidence, had no basis in the record").

C. Dr. Ugone's Opinions With Respect To Price Erosion Should Be Excluded As Flawed, Speculative, And Unreliable

"To prove price erosion damages, a plaintiff must show that 'but for' infringement, it would have sold its product at higher prices." *Engineered Prod. Co. v. Donaldson Co., Inc.*, 147 Fed.Appx. 979, 990 (Fed. Cir. 2005) (citations omitted). "[T]he patentee's price erosion theory must account for the nature, or definition of the market, similarities between any benchmark market and the market in which price erosion is alleged, and the effect of the hypothetically increased price on the likely number of sales at that price in the market." *Crystal Semiconductor*, 246 F.3d at 1357. Where an expert's "finding of causation" for price erosion damages "is not adequately supported by the record," his opinions should be excluded. *Spellbound*, 2012 U.S. Dist. LEXIS 188907, at *3.

Dr. Ugone's price erosion opinions are flawed, speculative, and unreliable. Dr. Ugone contends that MC has suffered [redacted], collectively, in price erosion from [redacted] MVPDs with whom MC entered into agreements to provide music services. (Supplemental Report (Ex. 13), Table 4; *see also* Ex. 8 to Supplemental Report ("Cited Price Erosion Evidence") (Ex. 19)). For each of these MVPDs, [redacted]. (*See generally* Cited Price Erosion Evidence (Ex. 19)). Dr. Ugone opined that the [redacted]

[redacted] is solely due to Stingray's alleged infringement. (Ugone Tr. (Ex. 2), 210:24-211:6). However, Dr. Ugone's damages reports are devoid of any discussion and/or consideration of the many other possible reasons for the lower monthly subscriber rates.

First, Dr. Ugone did not take into account whether any of Stingray's ***non-infringing music services*** caused the MVPDs to lower the monthly subscriber rates. (Ugone Tr. (Ex. 2), 199:5-11). This is problematic given Dr. Ugone's admissions that: [redacted] (Ugone Tr. (Ex. 2), 198:3-6; 200:13-201:14). On this basis, alone, Dr. Ugone's price erosion opinions should be excluded. *See Spellbound*, 2012 U.S. Dist. LEXIS 188907, at *3-4 (excluding expert's calculation of price erosion because it was "based on a finding that there were no acceptable non-infringing substitutes," but "[t]he expert [did] not appear to discuss the basis for this conclusion").

In addition, Dr. Ugone did not consider and/or provide opinions regarding several other factors that may have caused the monthly subscriber rates to drop, including, for example [redacted] (*id.*, 209:2-210:23)[4]. (*See also* Report (Ex.

[4] Indeed, for at least some of the [redacted] MVPDs, Music Choice did not provide [redacted]. (*See, e.g.*, Music Choice Affiliation Agreement with [redacted], (Ex. 22), p. 1 [redacted]) (emphasis added)).

1), ¶¶84-93; Supplemental Report, (Ex. 13), ¶¶12-17). Accordingly. Dr. Ugone's price erosion opinions should be excluded. *See Ericsson, Inc. v. Harris Corp.*, 2001 U.S. Dist. LEXIS 26485, at *22 (E.D. Tex. Mar. 13, 2001) (excluding damages expert's testimony because, *inter alia*, he did not, "in his analysis, sufficiently take[] into consideration all of the many other factors that could cause a manufacturer of a product to lower prices, which undermines the reliability of his conclusion").

Finally, Dr. Ugone's price erosion opinions should be excluded because they are based on the flawed assumption that price erosion can result from agreements with MVPDs to whom Stingray did ***not*** even offer the allegedly infringing Stingray Music TV App. (Ugone Tr. (Ex. 2), 194:19-195:16). [redacted]. (Cited Price Erosion Evidence (Ex. 19), pp. 9-10, 23-25). Nonetheless, Dr. Ugone opines that MC could have suffered price erosion based on the assumption that these MVPDs are [redacted] (Ugone Tr. (Ex. 2),196:7-197:3). But Dr. Ugone cites no documentary evidence supporting this assumption. Accordingly, Dr. Ugone's assumption is speculative, and his opinions related thereto should be excluded. *See Engineered Prod.*, 147 Fed.Appx. at 990 (excluding price erosion damages because the evidence that plaintiff's customer was aware of defendant's bid to a third party was "too speculative to support the necessary inference" that plaintiff's customer knew of the bid).

D. Dr. Ugone's Opinions With Respect To Commercial Success Should Be Excluded As Unreliable And Based On A Flawed Methodology

In support of MC's claim that the Visual Complement Patent is not obvious, Dr. Ugone offered opinions that MC's linear audio music channels are commercially successful. (Commercial Success Report (Ex. 14), ¶¶37-49). "Evidence of commercial success . . . requires a patentee to establish [a] nexus between the claimed invention and the commercial success of a product or method."

Datatreasury Corp. v. Wells Fargo & Co., No. 2:06-cv072, 2010 U.S. Dist. LEXIS 150694, at *54 (Feb. 25, 2010 E.D. Tex.) "A prima facie case of nexus is generally made out when the patentee shows both that there is commercial success, and that the thing (product or method) that is commercially successful is the invention disclosed and claimed in the patent." *Id.* at *54-55. Dr. Ugone identifies MC's linear audio music channels as the service/product covered by the Visual Complement Patent (Commercial Success Report (Ex. 14), ¶41), but he does not determine that the linear audio music channels are commercially successful in accordance with Federal Circuit law.

Dr. Ugone cites to no evidence purportedly demonstrating the success of MC's linear audio music channels, themselves. Rather, Dr. Ugone cites to [redacted]. (Commercial Success Report (Ex. 14) ¶¶39-40). Without evidence of success of MC's linear audio music channels, Dr. Ugone cannot possibly opine that any success is attributed to the features of the Visual Complement Patent and, as such, Dr. Ugone's testimony should be excluded. *See Datatreasury*, 2010 U.S. Dist. LEXIS 150694, at *55-56 (excluding expert's testimony of commercial success because he did not have a reliable basis to demonstrate nexus).[5]

IV. CONCLUSION

In view of the foregoing, Stingray respectfully requests that the court grant its *Daubert* motion to exclude certain testimony and opinions of Dr. Ugone.

[5] To the extent Music Choice contends that "high viewership" or "popularity" (Commercial Success Report (Ex. 14), ¶¶41-45) is akin to commercial success, it is not. *Datatreasury*, 2010 U.S. Dist. LEXIS 150694, at *61 ("use does not necessarily indicate commercial success of the claimed invention because what is claimed may not necessarily drive what is sold or what is commercially successful").

REDACTED

HIGHLY CONFIDENTIAL-ATTORNEY'S EYES ONLY

Dated: May 31, 2019

Respectfully submitted,

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REDACTED
HIGHLY CONFIDENTIAL-ATTORNEY'S EYES ONLY

CERTIFICATE OF CONFERENCE

On May 31, 2019, Julie Bookbinder and Elana Araj, counsel for Defendants, conferred with Robert Rhoad, counsel for Plaintiff, as required by Local Rule 7(h). Counsel for Plaintiff confirmed that Plaintiff opposes this motion. Discussions conclusively ended at an impasse, leaving an open issue for the Court to resolve.

/s/ Joshua L. Raskin
Joshua L. Raskin

CERTIFICATE OF SERVICE

The undersigned certifies that on this 31st day of May 2019, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document by electronic mail under Local Rule CV-5(d).

/s/ Joshua L. Raskin
Joshua L. Raskin

CERTIFICATE OF AUTHORIZATION TO FILE UNDER SEAL

Pursuant to Local Rule 5(a)(7)(A), the undersigned hereby certifies that the corresponding documents were filed under seal pursuant to the Court's First Amended Stipulated Protective Order (Dkt. No. 132).

/s/ Joshua L. Raskin
Joshua L. Raskin

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

MUSIC CHOICE,	)	
	)	
Plaintiff,	)	
	)	**C.A. No. 2:16-CV-0586-JRG-RSP**
v.	)	
	)	
STINGRAY DIGITAL GROUP INC. and STINGRAY MUSIC USA, INC.	)	**Jury Trial Demanded**
	)	
	)	
Defendants.	)	

SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Music Choice, by its undersigned counsel, with knowledge as to its own acts and status, and upon information and belief as to the acts and status of others, for its Second Amended Complaint against defendant Stingray Digital Group Inc. and Stingray Music USA, Inc. (collectively "Stingray"), alleges as follows:

PRELIMINARY STATEMENT

1. This is an action for patent infringement under the United States patent laws, 35 U.S. C. § 1, *et seq*. The accused instrumentalities include the Stingray Music products and services ("Stingray Music System/Method") that provides digital audio music channels and music videos on demand through cable operator, satellite, and/or Internet Protocol (IP) television platforms, and is used, sold and/or offered for sale in, and/or imported into, the United States, in the State of Texas, and in this judicial district, by defendant Stingray. By way of example, the Stingray Music System/Method infringes at least claims 1 and 8 of U.S. Patent No. 8,769,602; claims 1, 12 and 17 of U.S. Patent No. 9,357,245; claims 1 and 8 of U.S. Patent No. 7,320,025; claims 1, 6, 11, and 16 of U.S. Patent No. 9,351,045; and claims 1, 6, and 14 of U.S. Patent No.

9,414,121, which patents are owned for all purposes by Plaintiff Music Choice (collectively, the "Patents-in-Suit").

THE PARTIES

2. Plaintiff Music Choice is a Pennsylvania general partnership, and has its principal place of business at 650 Dresher Road, Horsham, PA 19044. Music Choice is doing business in this judicial district.

3. Music Choice is a pioneer in the digital music field. In 1991, the founders of Music Choice launched one of the first digital audio services in the World. Since that time, Music Choice has significantly expanded its programming services, and today provides a multi-platform music network. Music Choice has been, and continues to be, a leading innovator of the technology enabling the programming, production and distribution of video and audio music content for digital cable, satellite and IP television, broadband (PCs) and mobile devices.

4. Music Choice's products and services currently include 75 commercial interruption free audio music channels, 25 music video channels and single-play video on demand (VOD) content. Music Choice's music channels and VOD content are among the most listened to and watched in the United States. These products and services are available on a linear and/or "TV Everywhere" basis. Music Choice currently has approximately 47.2 million monthly listeners averaging 28.2 hours per week, and in 2015 Music Choice's videos were the most watched free VOD content. Music Choice's VOD views represent 10% of all VOD views in participating networks.

5. Music Choice has spent considerable time, effort, and money over the years building its business in audio music channels, music video channels, video on demand services,

and TV Everywhere services, developing and deploying proprietary digital audio and VOD technology, and protecting that technology by pursuing and securing patent rights.

6. Defendant Stingray Digital Group Inc. ("Stingray Digital") is a Canadian corporation with its principal place of business at 730 Wellington Street, Montreal, Quebec, Canada H3C 1T4. Stingray currently has over 250 employees across the world.

7. Defendant Stingray Music USA, Inc. ("Stingray Music") is a Delaware corporation, with its principal place of business at 2127 Ayrsley Town Blvd., Suite 202, Charlotte, North Carolina 28273. Stingray Music USA, Inc. is a wholly owned subsidiary of Stingray Digital.

8. Defendants Stingray Digital and Stingray Music (collectively "Stingray") are doing business in the United States, in the State of Texas, and in this judicial district.

JURISDICTION AND VENUE

9. This is a civil action for patent infringement arising under the patent laws, 35 U.S.C. §§ 1 *et seq.* This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

10. Stingray has solicited business in the State of Texas, transacted business within the State of Texas, and attempted to derive financial benefit from residents of the State of Texas, including benefits directly related to the instant patent infringement cause of action set forth herein.

11. Stingray has placed its infringing Stingray Music System into the stream of commerce, and practiced its infringing Stingray Music Method, throughout the United States

with the expectation that they will be used in this judicial district, which systems and methods have been used in this judicial district.

12. Stingray is subject to personal jurisdiction in this judicial district because it is present within, has minimum contacts with, and regularly conducts business in the State of Texas and the Eastern District of Texas. Music Choice's cause of action arises directly from Stingray's business contacts and other activities in the State of Texas and in this judicial district.

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

14. The Stingray Music System/Method has been, and continues to be, used and distributed by Stingray in the Eastern District of Texas. More specifically, Stingray, directly and/or through its agents and intermediaries, has placed the Stingray Music System/Method into the stream of commerce throughout the United States through established channels, including multichannel video programming distributors (MVPDs), with the expectation and/or knowledge that the Stingray Music System/Method will be used, sold, and offered for sale in, and/or imported into, the State of Texas and in this judicial district.

15. Without limiting the foregoing, Stingray provides the Stingray Music System/Method to MVPDs and subscribers/end users in this judicial district with Stingray's UbiquiCAST distributed broadcast architecture, including UbiquiCAST servers that are set-up and configured to each MVPD's specific requirements. These configured UbiquiCAST servers are shipped to MVPD headends, where they are installed and are used by Stingray to provide the Stingray Music System/Method to MVPDs and to subscribers/end users through receivers in this judicial district in conjunction with delivered audio and video programming services. For example, Stingray's UbiquiCAST servers are installed at AT&T's headends located in Texas and provide the Stingray Music System/Method via AT&T's U-Verse® TV services to

subscribers/end users through receivers in this judicial district. Stingray uploads new content and program scheduling data for the Stingray Music System/Method by a secure virtual private network link to its UbiquiCAST servers located in Texas. Such updates are automatic, and the management of the UbiquiCAST servers located in Texas is remotely controlled by Stingray. Stingray further provides twenty-four hour, seven days a week help and support for its UbiquiCAST servers located in Texas.

THE PATENTS-IN-SUIT

16. U.S. Patent No. 8,769,602 ("the '602 Patent"), entitled "System And Method For Providing An Interactive, Visual Complement To An Audio Program," was duly and lawfully issued by the U.S. Patent and Trademark Office on July 1, 2014. A true and correct copy of the '602 Patent is attached as Exhibit A.

17. The '602 Patent lists David J. Del Beccaro, Stuart H. Farber, Kelley L. Giannetti, Donna M. O'Neill, Jeremy C. Rosenberg, Robert M. Steinberg, Christina B. Tancredi, and Ronald M. Yurman as inventors.

18. Music Choice is the owner of the '602 Patent by valid assignment from the inventors. Music Choice owns all rights, title, and interest in the '602 Patent, including the right to sue for and recover all past, present, and future damages for infringement of the '602 Patent.

19. The Abstract of the '602 Patent provides as follows:

> A system and method for providing an interactive, visual complement to one or more audio programs. In one aspect, the system comprises an audio subsystem for generating an audio signal corresponding to a sound recording. The system also comprises a video subsystem for generating a video image specification based, at least in part, on the sound recording. In one aspect, the audio signal and video image specification are transmitted to an audio/video signal transmission system. The transmission system receives the video image specification and generates a video signal that conforms to the video image specification. The video signal and

the audio signal are transmitted to at least one consumer receiver. In this way, the system provides a visual complement to an audio program.

20. U.S. Patent No. 9,357,245 (the "'245 Patent"), entitled "System And Method For Providing An Interactive, Visual Complement To An Audio Program," was duly and lawfully issued by the U.S. Patent and Trademark Office on May 31, 2016. A true and correct copy of the '245 Patent is attached as Exhibit B.

21. The '245 Patent lists David J. DelBeccaro, Stuart H. Farber, Kelley L. Giannetti, Donna M. O'Neill, Jeremy C. Rosenberg, Robert M. Steinberg, Christina B. Tancredi, and Ronald M. Yurman as inventors.

22. Music Choice is the owner of the '245 Patent by valid assignment from the inventors. Music Choice owns all rights, title, and interest in the '245 Patent, including the right to sue for and recover all past, present, and future damages for infringement of the '245 Patent.

23. The Abstract of the '245 Patent provides as follows:

> A system and method for providing an interactive, visual complement to one or more audio programs. In one aspect, the system comprises an audio subsystem for generating an audio signal corresponding to a sound recording. The system also comprises a video subsystem for generating a video image specification based, at least in part, on the sound recording. In one aspect, the audio signal and video image specification are transmitted to an audio/video signal transmission system. The transmission system receives the video image specification and generates a video signal that conforms to the video image specification. The video signal and the audio signal are transmitted to at least one consumer receiver. In this way, the system provides a visual complement to an audio program.

24. U.S. Patent No. 7,320,025 ("the '025 Patent"), entitled "Systems And Methods For Providing A Broadcast Entertainment Service And An On-Demand Entertainment Service," was duly and lawfully issued by the U.S. Patent and Trademark Office on January 15, 2008. A true and correct copy of the '025 Patent is attached as Exhibit C.

25. The ’025 Patent lists Robert M. Steinberg, Ronald M. Yurman, Jeremy C. Rosenberg, Daniel L. McGonigal, John Feras, David J. DelBeccaro, and Stuart H. Farber as inventors.

26. Music Choice is the owner of the ’025 Patent by valid assignment from the inventors. Music Choice owns all rights, title, and interest in the ’025 Patent, including the right to sue for and recover all past, present, and future damages for infringement of the ’025 Patent.

27. The Abstract of the ’025 Patent provides as follows: “The present invention provides systems and methods for, in some cases, supplementing a broadcast media service with an on-demand and personalized media service.”

28. U.S. Patent No. 9,351,045 (the “’045 Patent”), entitled “Systems And Methods For Providing A Broadcast Entertainment Service And An On-Demand Entertainment Service,” was duly and lawfully issued by the U.S. Patent and Trademark Office on May 24, 2016. A true and correct copy of the ’045 Patent is attached as Exhibit D.

29. The ’045 Patent lists Robert M. Steinberg, Ronald M. Yurman, Jeremy C. Rosenberg, Daniel L. McGonigal, John Feras, David J. DelBeccaro, and Stuart H. Farber as inventors.

30. Music Choice is the owner of the ’045 Patent by valid assignment from the inventors. Music Choice owns all rights, title, and interest in the ’045 Patent, including the right to sue for and recover all past, present, and future damages for infringement of the ’045 Patent.

31. The Abstract of the ’045 Patent provides as follows: “The present invention provides systems and methods for, in some cases, supplementing a broadcast media service with an on-demand and personalized media service.”

32. U.S. Patent No. 9,414,121 ("the '121 Patent"), entitled "Systems And Methods For Providing An On-Demand Entertainment Service," was duly and lawfully issued by the U.S. Patent and Trademark Office on August 9, 2016. A true and correct copy of the '121 Patent is attached as Exhibit E.

33. The '121 Patent lists Stuart H. Farber, Ronald M. Yurman, Jeremy C. Rosenberg, Robert M. Steinberg, John J. Feras Jr., Daniel L. McGonigal, Donna M. O'Neill, Christina B. Tancredi, and David J. Del Beccaro as inventors.

34. Music Choice is the owner of the '121 Patent by valid assignment from the inventors. Music Choice owns all rights, title, and interest in the '121 Patent, including the right to sue for and recover all past, present, and future damages for infringement of the '121 Patent.

35. The Abstract of the '121 Patent provides as follows: "The present invention provides systems and methods for, in some cases, supplementing a broadcast media service with an on-demand service."

STINGRAY'S INFRINGING CONDUCT

36. Stingray owns, operates, and is otherwise responsible for the Stingray Music System/Method, that provides digital audio music channels and music videos on demand through cable operator, satellite, and/or Internet Protocol television platforms, such as AT&T's U-Verse® service. The accused Stingray Music System/Method is used, sold and/or offered for sale in the United States, and/or imported into the United States, by defendant Stingray.

37. Beginning in 2006, Music Choice established a relationship with AT&T to provide Music Choice products and services on the AT&T U-Verse® service. The first agreement with AT&T concluded in 2007. During the period from fall 2010 through early 2011,

Music Choice and AT&T negotiated a new agreement for AT&T's carriage of Music Choice's products and services on the AT&T U-Verse® service through December 2013, which agreement was subsequently renewed/extended.

38. In the 2010-2011 time period, Music Choice became aware that Stingray was trying to displace Music Choice as the provider of digital audio music channels and music videos on demand on AT&T's U-Verse® service. At that time, it appeared that the Stingray product offering was an inferior product that lacked the enhanced functionality enabled by technology designed, developed, and patented by Music Choice. While Music Choice was successful in gaining AT&T's business, as a consequence of the very aggressive pricing offered by Stingray to AT&T, Music Choice was forced to lower its subscriber rates and to enter into a short term agreement. Music Choice sought to negotiate a longer term arrangement with AT&T to extend beyond December 2013, but was not able to reach agreement with AT&T on terms, and only executed two renewals to extend the term of the current agreement through first, February 28, 2014, and then subsequently through February 28, 2015.

39. Prior to the December 2013 contract expiration with AT&T and subsequent extension, Stingray expressed an interest in acquiring Music Choice. In 2010, Music Choice learned that Stingray was focused on entering the U.S. market. Stingray's expansion plans appeared, initially, to involve acquisition of an already going concern in the U.S. that would provide Stingray with access to an existing music service and the technology, rights, affiliates and subscribers necessary to penetrate and operate in the U.S. market. Throughout the period from 2011 to 2015, Stingray had repeated contacts with Music Choice, as well as with Music Choice's partners, and MVPDs and affiliates that Music Choice had contracts with, about its interest in acquiring Music Choice.

40. As part of its expressions of interest to acquire Music Choice, Stingray repeatedly sought access to Music Choice's confidential business and financial information, including its agreements with MVPDs and affiliates, Music Choice's proprietary technology, and its portfolio of issued patents and pending applications. In May 2013, Stingray and Music Choice executed a Confidentiality Agreement, as well as a subsequent letter agreement in June 2013, pursuant to which Stingray was provided access to much of the documentation and information it sought. In addition to reviewing Music Choice's confidential documents, Stingray personnel and their representatives inspected Music Choice's facilities in Horsham, Pennsylvania and in New York City, and conducted interviews of Music Choice personnel.

41. After having access to Music Choice's confidential and proprietary technical documents and information, business and financial documents and information, and issued patents and pending applications, Stingray, in the fall of 2014, launched, as part of AT&T's U-Verse® services, an improved digital audio music and video on demand system and service that included the features and functionality infringing Music Choice's patents – features and functionality that Music Choice had not previously observed in Stingray's product offering prior to Stingray's access to the information it obtained from Music Choice.

42. In October 2014, Music Choice was informed that AT&T was eliminating Music Choice on AT&T's U-Verse® service effective March 1, 2015, and that Music Choice's service would effectively be replaced with the infringing Stingray Music System/Method carried by AT&T.

43. In addition to the infringing Stingray Music System/Method provided on the AT&T U-Verse® service, Stingray announced, in May 2016, that it will expand its partnership with Comcast to also provide the Stingray Music System/Method to Comcast Xfinity customers.

In connection with the announcement, the senior vice president of marketing and communications for Stingray told Multichannel News that "[t]he ability to curate playlists or access already created playlists on your large screen in your living room is an [*sic*] much better experience compared to digital." *See*, R. Thomas Umstead, "Stingray Expands Deal with Comcast," Multichannel News (May 2, 2016), available at http://www.multichannel.com/news/content/stringray-strikes-music-chord-comcast/404616. As explained in further detail below, this functionality, touted by Stingray as providing a "much better experience," is believed to be part of the technology developed by Music Choice disclosed and claimed in the Patents-in-Suit.

44. Stingray provides the Stingray Music System/Method to MVPDs and subscribers/end users with Stingray's UbiquiCAST distributed broadcast architecture, including UbiquiCAST servers that are set-up and configured to each MVPD's specific requirements. These configured UbiquiCAST servers are shipped to MVPD headends, where they are installed and are used by Stingray to provide the Stingray Music System/Method to MVPDs and to subscribers/end users through receivers in conjunction with delivered audio and video programming services. For example, Stingray's UbiquiCAST servers are installed at AT&T's headends and provide the Stingray Music System/Method via AT&T's U-Verse® TV services to subscribers/end users through receivers. Stingray uploads new content and program scheduling data for the Stingray Music System/Method by a secure virtual private network link to its UbiquiCAST servers. Such updates are automatic, and the management of the UbiquiCAST servers is remotely controlled by Stingray. Stingray further provides twenty-four hour, seven days a week help and support for its UbiquiCAST servers.

45. Stingray has contractual relationships with partner MVPDs, such as, for example, AT&T, regarding the operation and use of the Stingray Music System/Method. Through these contractual relationships, Stingray and its partner MVPDs form a joint enterprise in provisioning and/or performing the Stingray Music System/Method to which Stingray has at least an equal voice. Moreover, through these contractual relationships, Stingray controls the manner and timing of an MVPD's provisioning or performance of the Stingray Music System/Method, and conditions an MVPD's receipt of benefits or participation in the Stingray Music System/Method by configuring, installing, and programming Stingray's UbiquiCAST servers at MVPD headends.

46. The Stingray Music System/Method infringes, literally and/or under the doctrine of equivalents, at least claims 1 and 8 of the '602 Patent; claims 1, 12 and 17 of the '245 Patent; claims 1 and 8 of the '025 Patent; claims 1, 6, 11, and 16 of the '045 Patent; and claims 1, 6, and 14 of the '121 Patent, as explained in detail below.

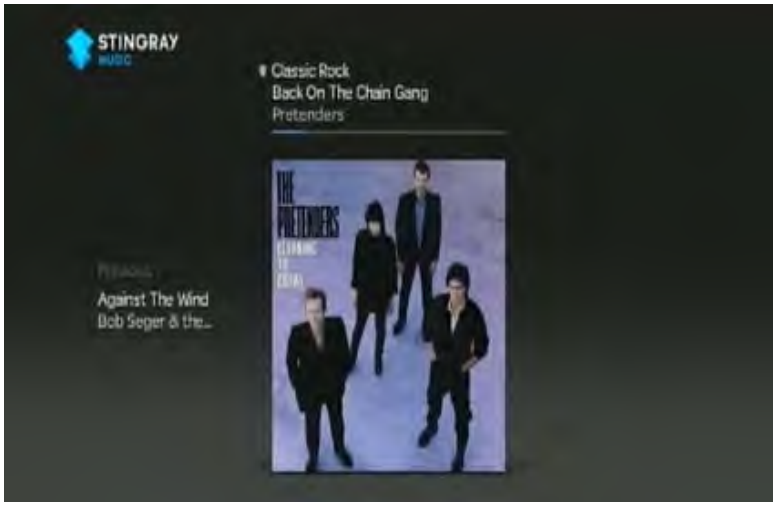
47. Stingray has and continues to use, sell and/or offer for sale in the United States, and/or import into the United States, the infringing Stingray Music System/Method despite an objectively high likelihood that its actions constituted infringement of one or more the Patents-in-Suit. This objectively-defined risk of infringement was known or so obvious that it should have been known to Stingray.

U.S. Patent No. 8,769,602

48. Stingray has used and continues to use the Stingray Music Method in a manner that infringes, literally and/or under the doctrine of equivalents, at least claim 1 of the '602 Patent. Specifically, through the Stingray Music Method, Stingray directly, and/or in conjunction with one or more intermediaries or agents, performs a method of providing a visual

complement to an audio stream (*e.g.*, the Stingray music app on AT&T's U-Verse® platform provides a song title, artist name, and/or album cover image as a visual complement to a song).





49. The Stingray Music Method transmits, from a first transmission system (*e.g.*, the Stingray UbiquiCAST music content origin server) to a second transmission system (*e.g.*, the AT&T U-Verse® system), audio data corresponding to a sound recording (*e.g.*, audio data corresponding to the sound recording "Back on the Chain Gang").

50. The Stingray Music Method transmits a data packet (*e.g.*, an HTML or XML document) including a video image specification (*e.g.*, a specification of a thumbnail cover art

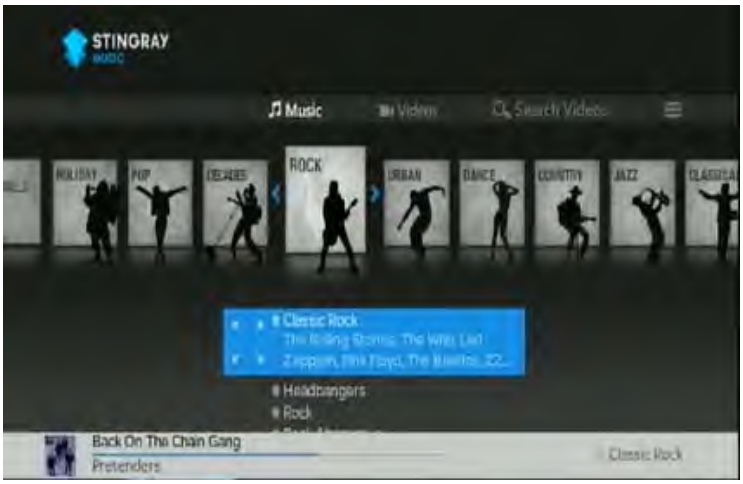
image to be displayed in a video image associated with the sound recording "Back on the Chain Gang") while the audio data (*e.g.*, audio data corresponding to the sound recording "Back on the Chain Gang") is being transmitted, wherein the video image specification specifies one or more media asset identifiers, each of which identifies one or more media assets, one or more of the media asset identifiers identifying a media asset associated with the sound recording (*e.g.*, an identifier of a thumbnail cover art image), the data packet further including sound recording information associated with the sound recording, the sound recording information including one or more of the title of the sound recording (*e.g.*, "Back on the Chain Gang") and the name of the artist who recorded the sound recording (*e.g.*, the "Pretenders").

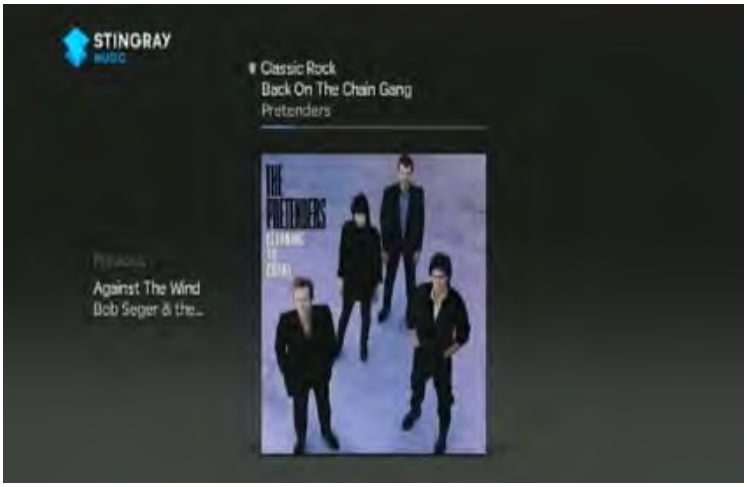
51. The Stingray Music Method transmits the data packet (*e.g.*, the HTML or XML document) to a system (*e.g.*, a device running the Stingray music app) including a video image generator, wherein the video image generator is configured to generate a video image (*e.g.*, a video image including the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image) using the video image specification and the system is configured to provide the generated video image (*e.g.*, the video image including the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image) to a device that is operable to display the video image to a user of the device.

52. The video image generator (*e.g.*, the device running the Stingray Music app) is configured to generate the video image (*e.g.*, the video image including the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image) by retrieving the media assets (*e.g.*, the thumbnail cover art image associated with the sound recording "Back on the Chain Gang") identified in the video image specification.

53. Stingray has used and continues to use the Stingray Music System in a manner that infringes, literally and/or under the doctrine of equivalents, at least claim 8 of the '602 Patent. Stingray puts the invention of claim 8 of the '602 Patent into service, *i.e.*, by controlling the Stingray Music System as a whole and obtaining benefit from it. Specifically, through the Stingray Music System, Stingray directly, and/or in conjunction with one or more intermediaries or agents provides a system for providing a visual complement (*e.g.*, providing a song title, artist name, and/or album cover image as a visual complement to a song) to an audio service (*e.g.*, the streaming music channels available using the Stingray music app on AT&T U-Verse®).







54. The Stingray Music System includes a music content origin server (*i.e.*, the Stingray UbiquiCAST server), which includes an audio subsystem configured to store a playlist (*e.g.*, a playlist including the sound recording "Back on the Chain Gang") for an audio channel (*e.g.*, a classic rock audio channel) of the audio service (*e.g.*, the Stingray audio service).

55. The Stingray content origin server (*i.e.*, the Stingray UbiquiCASTserver) of the Stingray Music System includes a first transmission system. The Stingray Music System also includes a second transmission system (*e.g.*, the AT&T U-Verse® system). The first transmission system is configured to transmit to the second transmission system audio data corresponding to a sound recording (*e.g.*, audio data corresponding to a sound recording for the song "Back on the Chain Gang") specified in the playlist (*e.g.*, the playlist for the classic rock linear audio channel).

56. The Stingray Music System includes a video image generator (*e.g.*, a device running the Stingray Music app).

57. In the Stingray Music System, the video image generator (*e.g.*, the device running the Stingray Music app) is configured to i) receive, while the sound recording (*e.g.*, the sound recording for the song "Back on the Chain Gang") is being transmitted, a video image

specification (*e.g.*, a specification of a thumbnail cover art image, sound recording title, and recording artist name to be displayed in a video image associated with the sound recording "Back on the Chain Gang") that specifies one or more media asset identifiers (*e.g.*, an identifier of a thumbnail cover art image) that identify one or more media assets (*e.g.*, a thumbnail cover art image for the song "Back on the Chain Gang"). The one or more media assets (*e.g.*, the thumbnail cover art image for the song "Back on the Chain Gang") are associated with the sound recording (*e.g.*, the sound recording for the song "Back on the Chain Gang") that is being transmitted. The video image specification (*e.g.*, the specification of a thumbnail cover art image, sound recording title, and recording artist name to be displayed in a video image associated with the sound recording "Back on the Chain Gang") also specifies sound recording information associated with the sound recording, the sound recording information comprising one or more of the title of the sound recording (*e.g.*, "Back on the Chain Gang") and the name of the artist (*e.g.*, the "Pretenders") who recorded the sound recording.

58. In the Stingray Music System, the video image generator (*e.g.*, the device running the Stingray Music app) is configured to generate a video image using the media assets identified in the video image specification (*e.g.*, the video image including the song title "Back on the Chain Gang," the artist name "Pretenders," and the specified associated cover art image).

59. In the Stingray Music System, the first transmission system (*e.g.*, the Stingray UbiquiCAST music content origin server) is further configured to transmit to the second transmission system (*e.g.*, the AT&T U-Verse® system) the generated video image (*e.g.*, the video image including the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image) multiplexed with the audio data corresponding to the sound recording (*e.g.*, the audio data corresponding to the sound recording "Back on the Chain Gang").

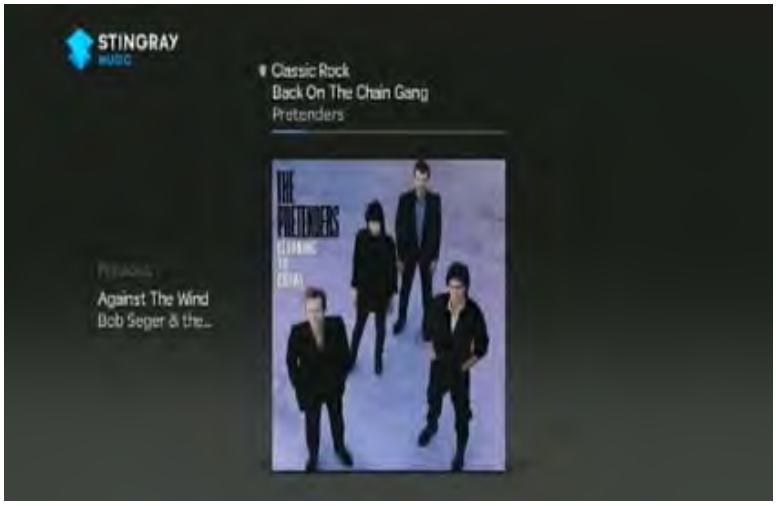
60. The Stingray Music Content origin server (*i.e.*, the Stingray UbiquiCAST server) of the Stingray Music System includes a video subsystem.

61. In the Stingray Music System, the audio subsystem of the Stingray Music Content origin server (*i.e.*, the Stingray UbiquiCAST server) is configured to i) retrieve the audio data corresponding to the sound recording (*e.g.*, the audio data corresponding to the sound recording "Back on the Chain Gang") prior to the first transmission system of the Stingray Music Content origin server transmitting said audio data and ii) provide to the video subsystem of the Stingray Music Content origin server a trigger message comprising an identifier associated with said sound recording (*e.g.*, an identifier associated with the sound recording "Back on the Chain Gang").

U.S. Patent No. 9,357,245

62. Stingray has used and continues to use the Stingray Music Method in a manner that infringes, literally and/or under the doctrine of equivalents, at least claim 1 of the '245 Patent. Specifically, through the Stingray Music Method, Stingray directly, and/or in conjunction with one or more intermediaries or agents, performs a method for providing a visual complement to an audio stream (*e.g.*, the Stingray music app on AT&T's U-Verse® platform provides a song title, artist name, and/or album cover image as a visual complement to a song).





63. The Stingray Music Method transmits, from a first transmission system (*e.g.*, a Stingray Music Content origin server) to a second transmission system (*e.g.*, the AT&T U-Verse® system), audio data corresponding to a selected song.

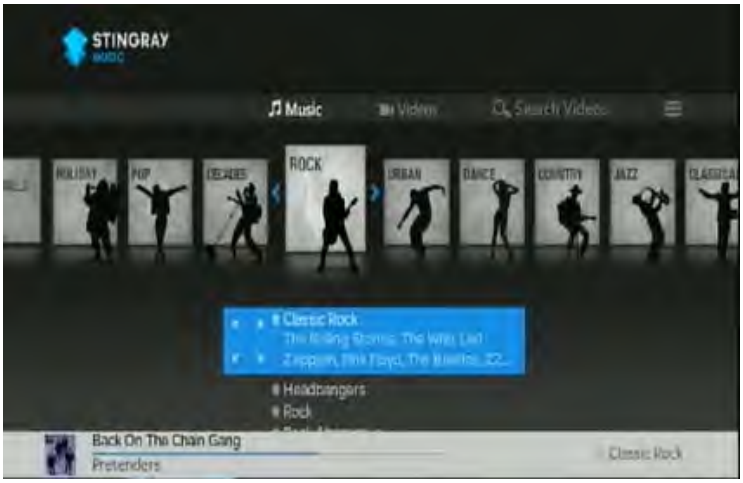
64. The Stingray Music Method transmits a data packet (*e.g.*, an HTML or XML document) that was generated using an identifier identifying the selected song (*e.g.*, the song "Back on the Chain Gang"), wherein the data packet includes a media asset identifier identifying a media asset (*e.g.*, a thumbnail cover art image for the song "Back on the Chain Gang") and further includes song information associated with the selected song (*e.g.*, "Back on the Chain

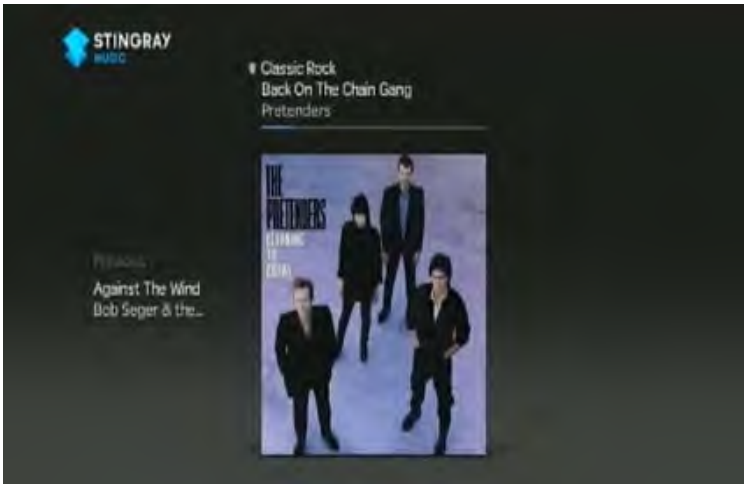
Gang"), the song information comprising the title of the song and the name of the artist who recorded the song (*e.g.*, the "Pretenders").

65. The Stingray Music Method transmits the data packet (*e.g.*, the HTML or XML document) to a receiving system (*e.g.*, a device running the Stingray Music app) that is configured such that, in response to receiving the data packet, the receiving system automatically generates a video image (*e.g.*, a video image including the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image) using the information included in the data packet and automatically outputs the generated video image (*e.g.*, the video image including the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image) such that it is received by a display device that is operable to display the video image to a user of the display device without the user having to select a menu item. The generated video image (*e.g.*, the video image including the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image) includes the song information comprising the title of the song (*e.g.*, "Back on the Chain Gang") and the name of the artist (*e.g.*, "Pretenders").

66. Stingray has used and continues to use the Stingray Music System in a manner that infringes, literally and/or under the doctrine of equivalents, at least claim 12 of the '245 Patent. Stingray puts the invention of claim 12 of the '245 Patent into service, i.e., by controlling the Stingray Music System as a whole and obtaining benefit from it. Specifically, through the Stingray Music System, Stingray directly, and/or in conjunction with one or more intermediaries or agents provides a system for providing a visual complement (*e.g.*, providing a song title, artist name, and/or album cover image as a visual complement to a song) to an audio service (*e.g.*, the streaming music channels available using the Stingray music app on AT&T U-Verse®).


Stingray Music app
Stingray Music, the best music for every moment, place and mood in your life!
PRESS INFO FOR PREVIEW
PRESS OK TO LAUNCH
STINGRAY
MUSIC
GAMES
TRIVIA
TOUCHFIT TV
CNN


STINGRAY
Music
ROCK
Classic Rock
Headbangers
Rock
Back On The Chain Gang
Pretenders


STINGRAY
Classic Rock
Back On The Chain Gang
Pretenders
Against The Wind
Bob Seger & the...

67. The Stingray Music System provides access to streaming linear audio channels and includes an audio transmission system configured to transmit audio data corresponding to a sound recording specified in a playlist for a linear audio channel.

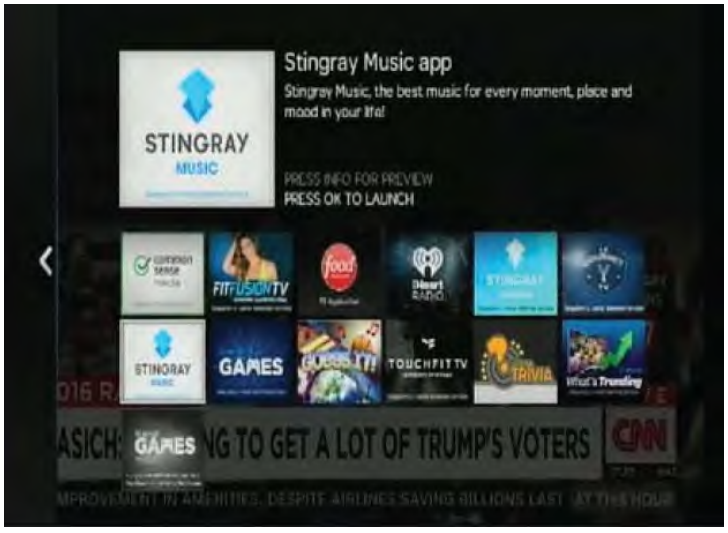
68. The Stingray Music System includes a receiving system (*e.g.*, a device running the Stingray Music app) that includes a receiver and a video image generator. In the Stingray Music System, the receiving system (*e.g.*, the device running the Stingray Music app) is configured to i) in response to receiving a data packet (*e.g.*, an HTML or XML document) that was generated using an identifier identifying the sound recording (*e.g.*, the sound recording for the song "Back on the Chain Gang"), generate a video image (*e.g.*, a video image including the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image) in accordance with information included in the data packet. The data packet includes a media asset identifier identifying a media asset (*e.g.*, a thumbnail cover art image for the song "Back on the Chain Gang") and further includes sound recording information associated with the sound recording, the sound recording information comprising the title of the sound recording (*e.g.*, "Back on the Chain Gang") and the name of the artist (*e.g.*, the "Pretenders") who recorded the sound recording.

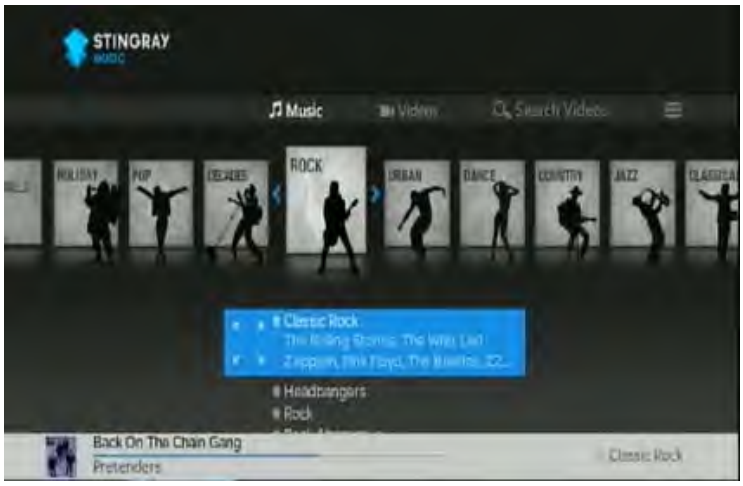
69. In the Stingray Music System, the receiving system (*e.g.*, the device running the Stingray Music app) is configured to ii) automatically output the generated video image such that it is received at a display device operable to display the video image (*e.g.*, the video image including the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image) to a user of the display device without the user having to select a menu item. In the Stingray Music System, the generated video image (*e.g.*, the video image including the song title "Back on the Chain Gang," the artist name "Pretenders," and the

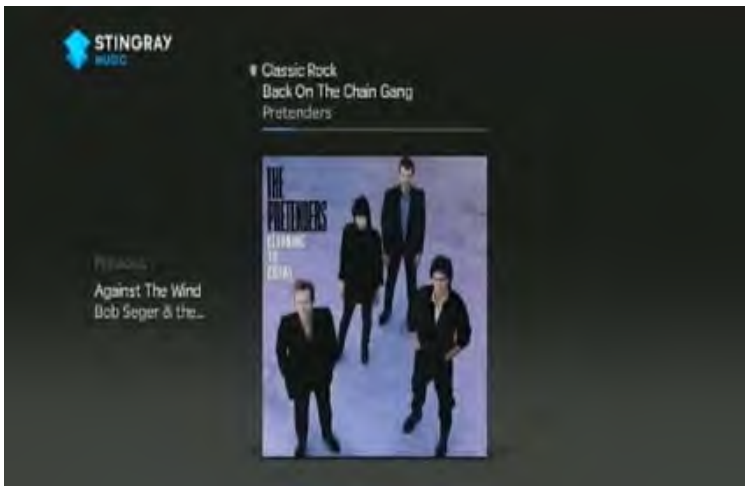
associated cover art image) output by the receiving system (*e.g.*, the device running the Stingray Music app) includes the song information comprising the title of the song (*e.g.*, "Back on the Chain Gang") and the name of the artist (*e.g.*, "Pretenders").

70. In the Stingray Music System, the receiving system (*e.g.*, the device running the Stingray Music app) is configured to retrieve the identified media asset (*e.g.*, the thumbnail cover art image for the song "Back on the Chain Gang") and use the retrieved media asset in generating the video image (*e.g.*, the video image including the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image).

71. Stingray has used and continues to use the Stingray Music Method in a manner that also infringes, literally and/or under the doctrine of equivalents, at least claim 17 of the '245 Patent. Specifically, through the Stingray Music Method, Stingray directly, and/or in conjunction with one or more intermediaries or agents, performs a method for providing a visual complement to an audio stream (*e.g.*, providing a song title, artist name, and/or album cover image as a visual complement to an audio stream for a song).







72. The Stingray Music System, which performs the Stingray Music Method, is a music multicast system for providing the audio stream to a plurality of users essentially simultaneously. The Stingray Music Method automatically selects a song (*e.g.*, a song "Back on the Chain Gang") from a set of available songs (*e.g.*, a set of songs for a classic rock audio channel). The Stingray Music Method generates a data packet (*e.g.*, an HTML or XML document) based on the selected song (*e.g.*, the song "Back on the Chain Gang"), the data packet including a media asset identifier identifying a media asset (*e.g.*, a thumbnail cover art image for the song "Back on the Chain Gang") and further including song information associated with the selected song (*e.g.*, the song "Back on the Chain Gang"), the song information comprising the

title of the song (*e.g.*, "Back on the Chain Gang") and the name of the artist who recorded the song (*e.g.*, the "Pretenders").

73. The Stingray Music System includes a first transmission system (*e.g.*, the Stingray Music Content origin server) and a second transmission system (*e.g.*, the AT&T U-Verse® system). The Stingray Music Method, as a result of automatically selecting the song, transmits, from the first transmission system to the second transmission system, the audio stream that consists of audio data corresponding to the selected song (*e.g.*, audio data for the song "Back on the Chain Gang").

74. The Stingray Music Method transmits the data packet (*e.g.*, the HTML or XML document) to a receiving system (*e.g.*, a device running the Stingray Music app). In the Stingray Music Method, the receiving system (*e.g.*, the device running the Stingray Music app) is configured such that, in response to receiving the data packet (*e.g.*, the HTML or XML document), the receiving system automatically generates a video image (*e.g.*, a video image including the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image) using the information included in the data packet and automatically outputs the generated video image such that it is received by a display device that is operable to display the video image (*e.g.*, the video image including the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image) to a user of the display device without the user having to select a menu item.

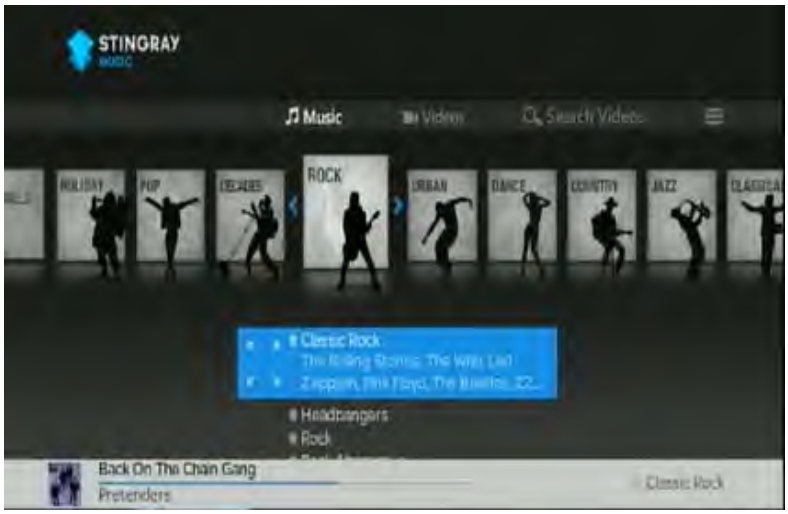
75. In the Stingray Music Method, the generated video image (*e.g.*, the video image including the song title "Back on the Chain Gang," the artist name "Pretenders," and the associated cover art image) output by the receiving system (*e.g.*, the device running the Stingray Music app) includes the song information including the title of the song (*e.g.*, "Back on the

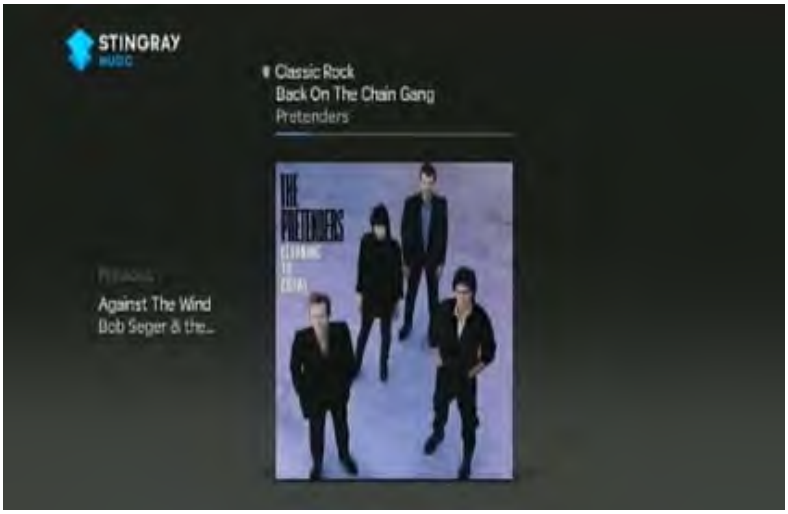
Chain Gang") and the name of the artist (*e.g.*, "Pretenders") and the still image identified by the media asset identifier (*e.g.*, the associated cover art image).

U.S. Patent No. 7,320,025

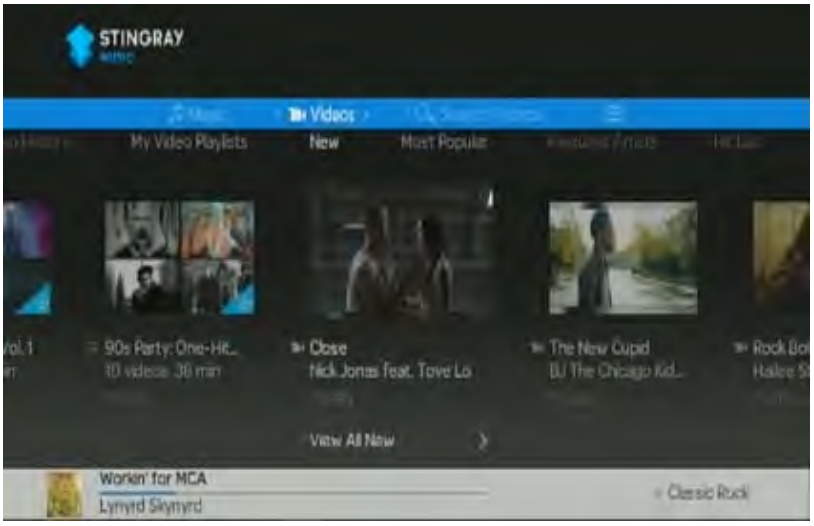
76. Stingray has used and continues to use the Stingray Music Method in a manner that infringes, literally and/or under the doctrine of equivalents, at least claim 1 of the '025 Patent. Specifically, through the Stingray Music Method, Stingray directly, and/or in conjunction with one or more intermediaries or agents, performs a method.

77. The Stingray Music Method configures a client system (*e.g.*, a device running the Stingray Music app) to receive and play music (*e.g.*, the song "Back on the Chain Gang" or "Workin' for MCA") broadcast from a broadcast media source (*e.g.*, the server system operated by Stingray alone or in conjunction with AT&T U-Verse®) through a broadcast channel (*e.g.*, the "Classic Rock" channel).



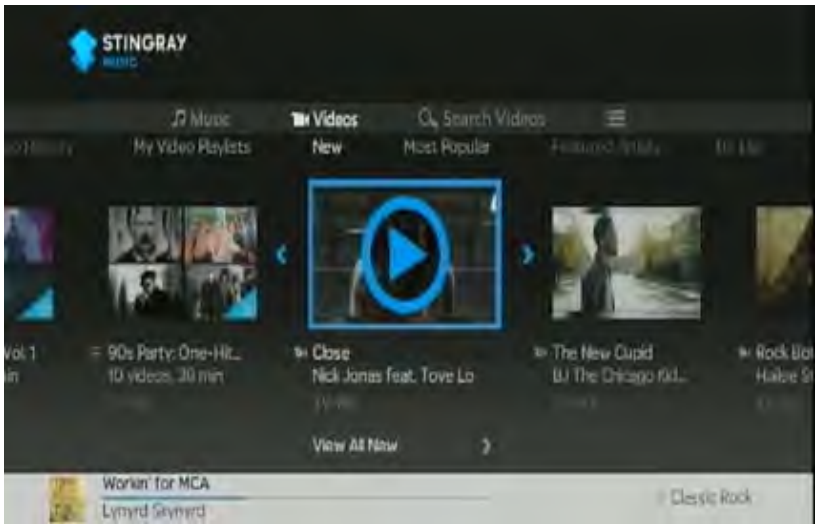


78. The Stingray Music Method configures the client system (*e.g.*, the device running the Stingray Music app) to receive application data that includes a video identifier identifying a video (*e.g.*, an identifier of a music video for the song "Close"). The application data is transmitted with the broadcast music (*e.g.*, the song "Back on the Chain Gang" or "Workin' for MCA").



79. The Stingray Music Method, while the client system (*e.g.*, the device running the Stingray Music app) is playing the broadcast music (*e.g.*, the song "Workin' for MCA"), (a) enables a user of the client system to indicate that the user desires to view the video (*e.g.*, the

music video for the song “Close”) and (b) receives an indication that the user desires to view the video (*e.g.*, the music video for the song “Close”).

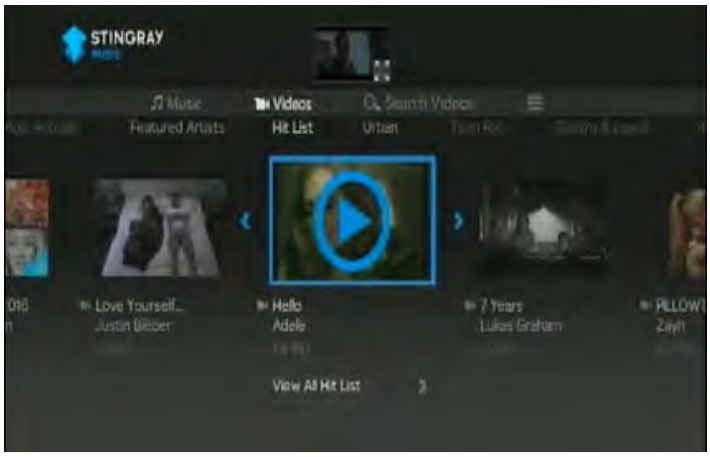


80. The Stingray Music Method, in response to receiving the indication (*e.g.*, the indication that the user desires to view the music video for the song “Close”), automatically ceases the playing of the broadcast music (*e.g.*, the song “Workin’ for MCA”), transmits from the client system (*e.g.*, the device running the Stingray Music app) to an on-demand system (*e.g.*, the Stingray UbiquiCAST music content origin server) the received video identifier (*e.g.*, the identifier of the music video for the song “Close”), and establishes an on-demand session between the on-demand system and the client system.

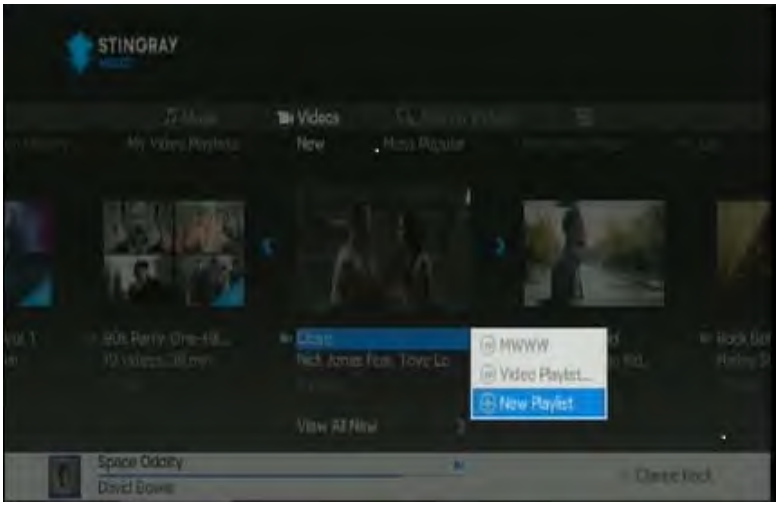
81. The Stingray Music Method, after establishing the on-demand session, transmits from the on-demand system (*e.g.*, the Stingray UbiquiCAST music content origin server) to the client system (*e.g.*, the device running the Stingray music app) the identified video (*e.g.*, the music video for the song “Close”), receives the transmitted video at the client system, and automatically plays the received video in response to receiving the transmitted video from the on-demand system.

82. Stingray has used and continues to use the Stingray Music Method in a manner that infringes, literally and/or under the doctrine of equivalents, at least claim 8 of the '025 Patent. Specifically, through the Stingray Music Method, Stingray directly, and/or in conjunction with one or more intermediaries or agents, performs a video on demand method.

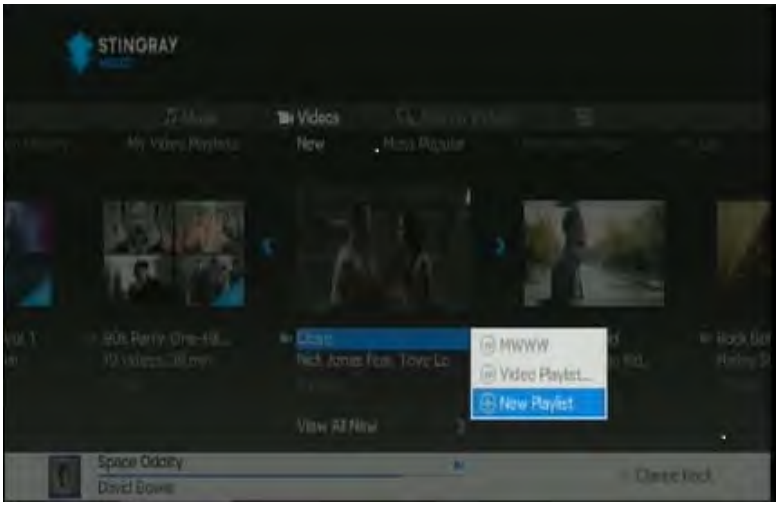


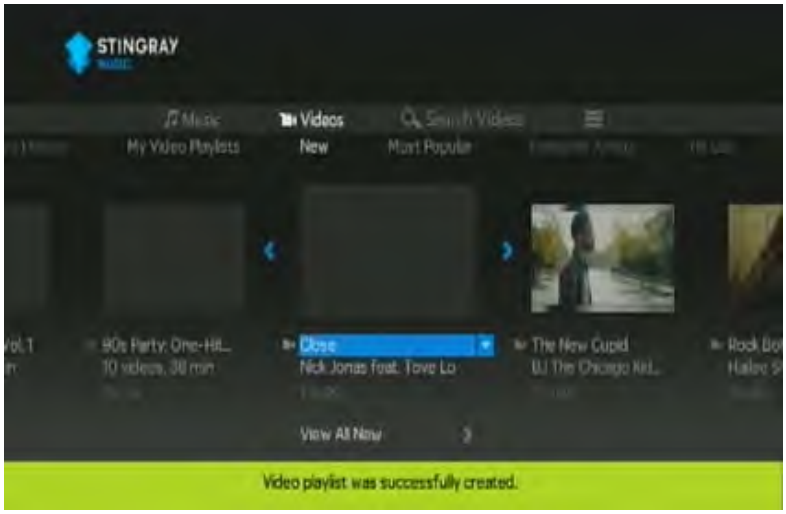


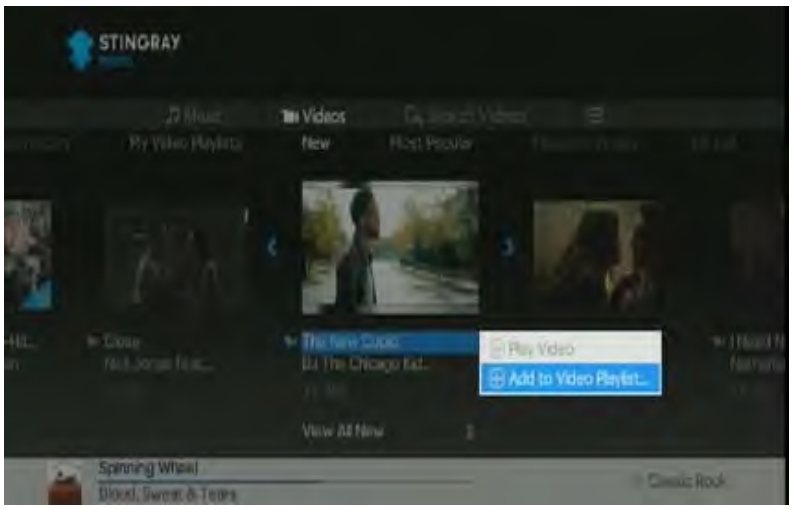
83. The Stingray Music Method receives, at an on-demand system, information indicating that a user desires to view a selected video (*e.g.*, information indicating that a user desires to view a selected music video for the song entitled "Close" in the form of information indicating that the user desires to create a playlist the music video for the song entitled "Close").

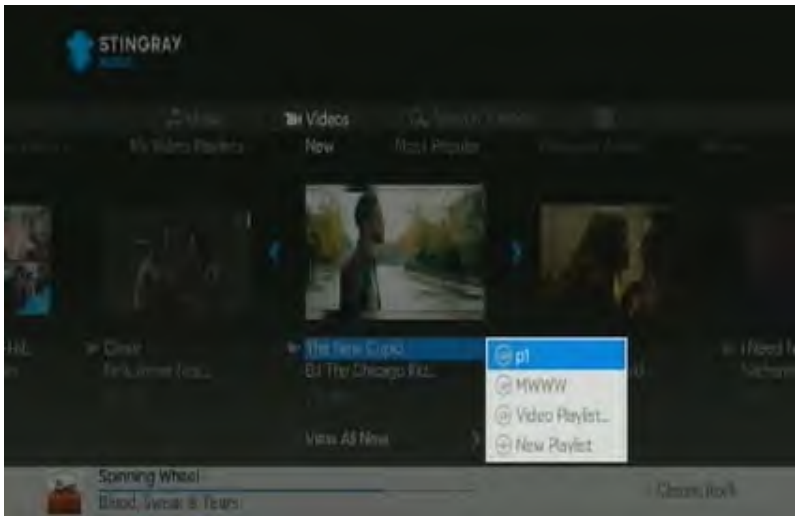


84. The Stingray Music Method creates a playlist (*e.g.*, a playlist entitled "p1"). The playlist includes a plurality of media assets (*e.g.*, music videos for songs entitled "Close" and "The New Cupid"), which include one media asset corresponding to the selected video (*e.g.*, the music video for the song entitled "Close").

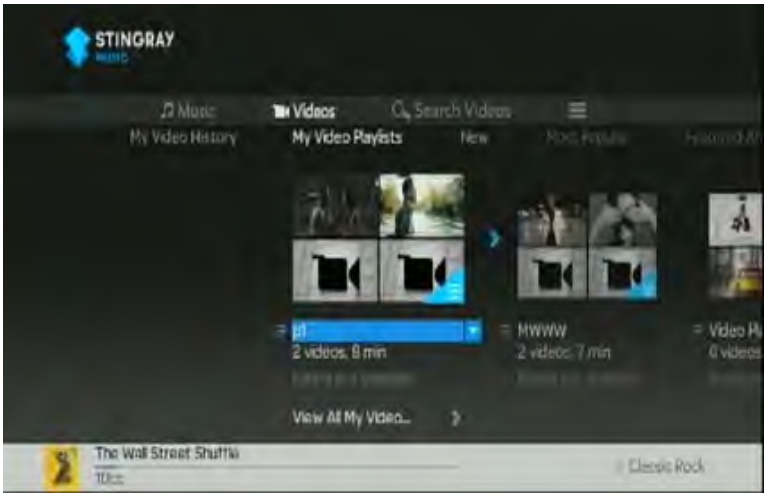


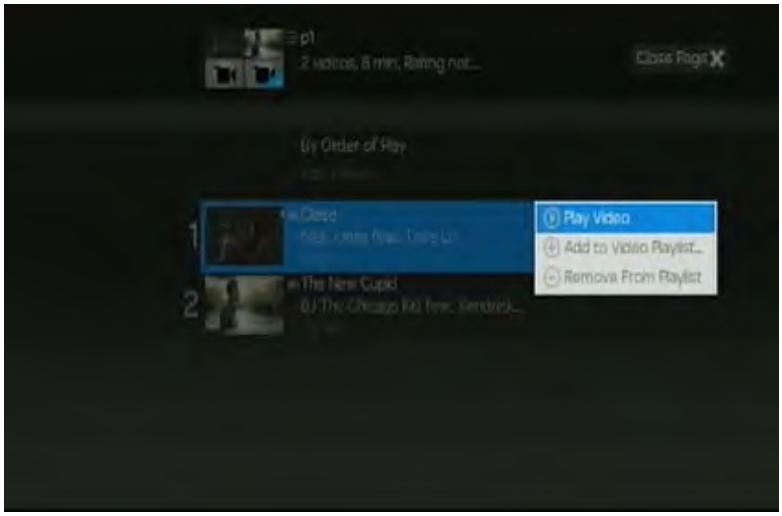




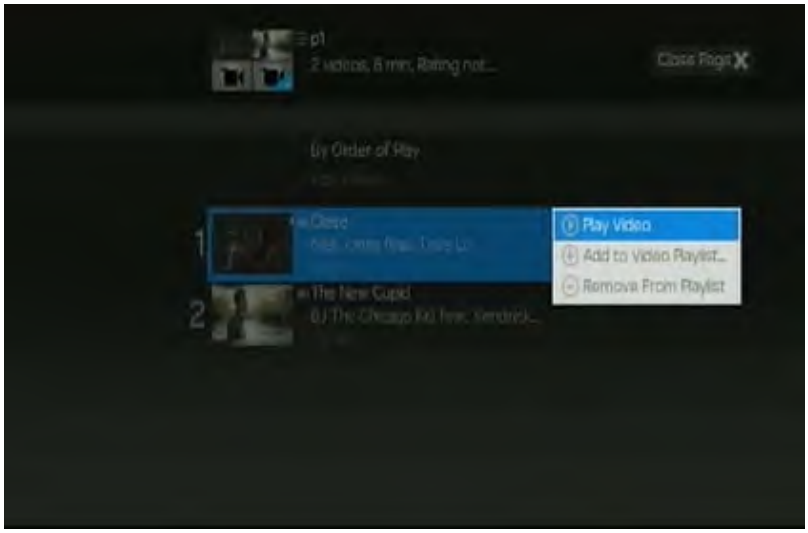


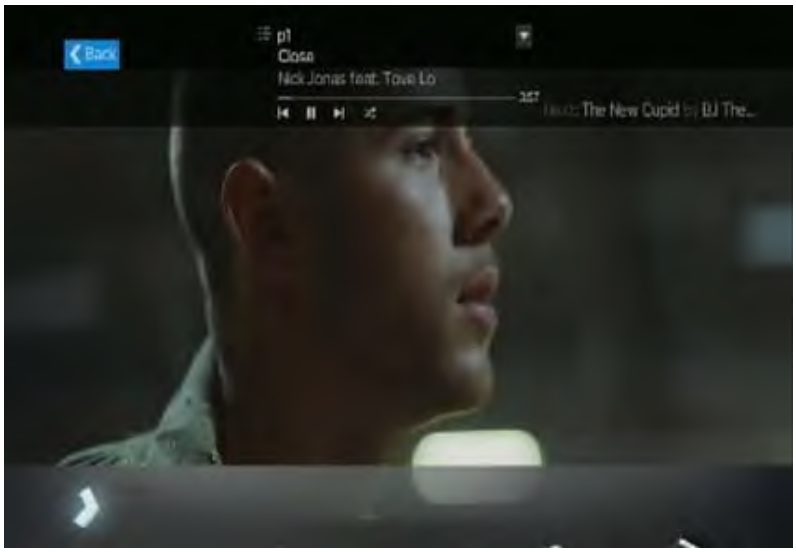
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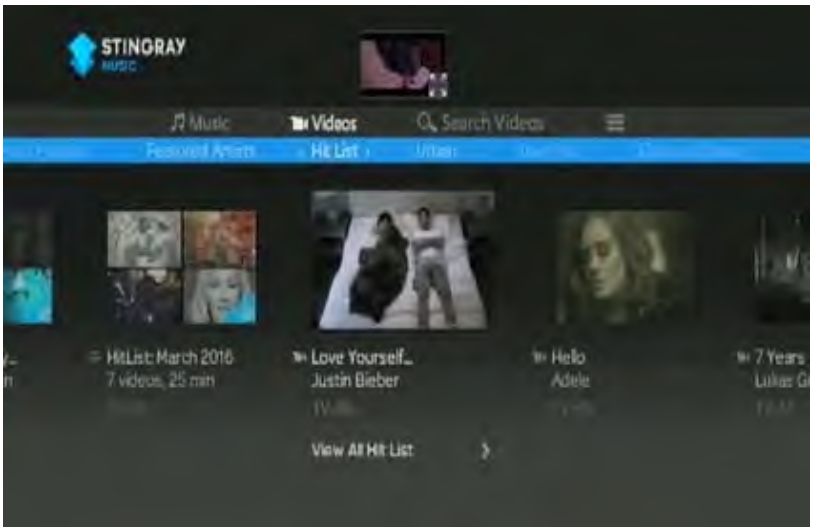


85. The Stingray Music Method transmits to a client system (*e.g.*, a device running the Stingray Music app) a media asset (*e.g.*, the music video for the song entitled “Close”) listed in the playlist (*e.g.*, the playlist entitled “p1”).

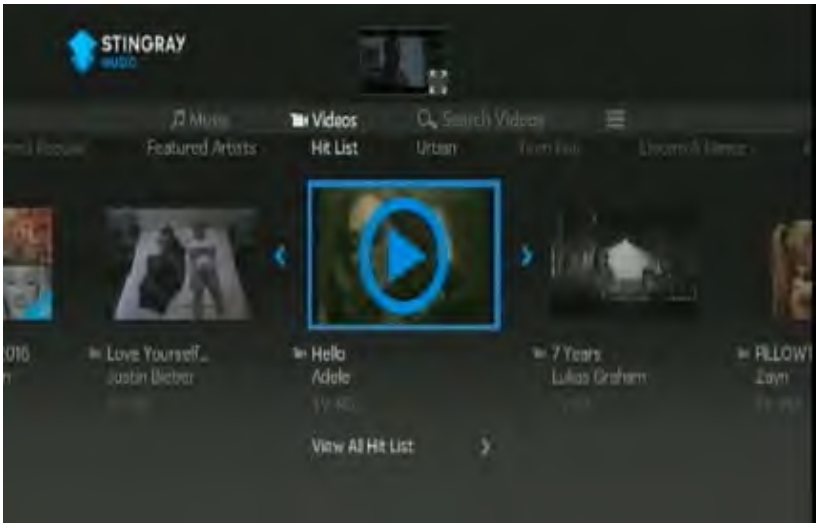




86. The Stingray Music Method transmits to the client system (*e.g.*, the device running the Stingray Music app) a video identifier (*e.g.*, a thumbnail identifying a music video for the song entitled "Hello") while transmitting to the client system the media asset (*e.g.*, the music video for the song entitled "Close," which continues to play at the top center of the Stingray music app screen).



87. While the client system (*e.g.*, the device running the Stingray Music app) is playing the media asset (*e.g.*, the music video for the song entitled "Close," which plays at the top center of the Stingray Music app screen), the Stingray Music Method (a) enables a user of the client system to indicate that that the user desires to view the video identified by the video identifier (*e.g.*, the music video for the song entitled "Hello") and (b) receives an indication that the user desires to view the video (*e.g.*, the music video for the song entitled "Hello").



88. The Stingray Music Method receives from the client system a message including the video identifier (*e.g.*, the video identifier for the music video for the song entitled "Hello").

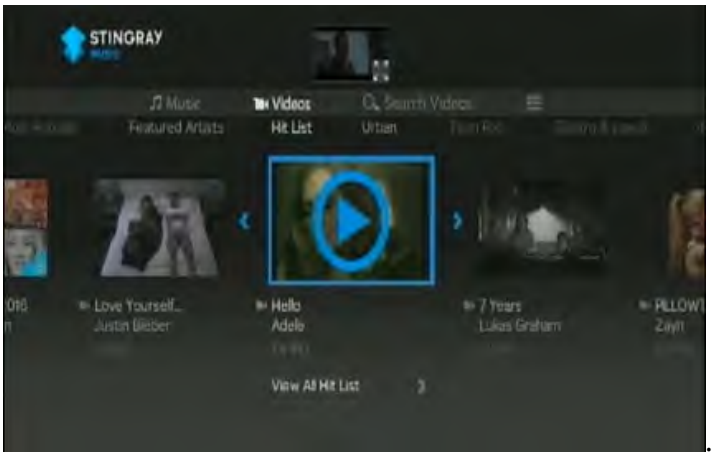
The message is received while at least a portion of the media asset is being transmitted to the client system (*e.g.*, while at least a portion of the music video for the song entitled "Close" plays at the top center of the Stingray music app screen).

89. The Stingray Music Method, in response to receiving the message from the client system (*e.g.*, the device running the Stingray Music app), ceases transmitting the media asset (*e.g.*, the music video for the song entitled "Close") and transmits the video identified by the video identifier (*e.g.*, the music video for the song entitled "Hello").

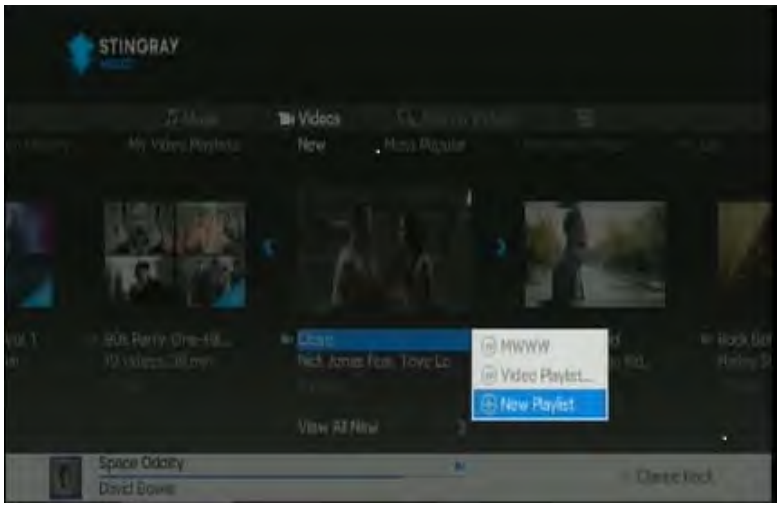
U.S. Patent No. 9,351,045

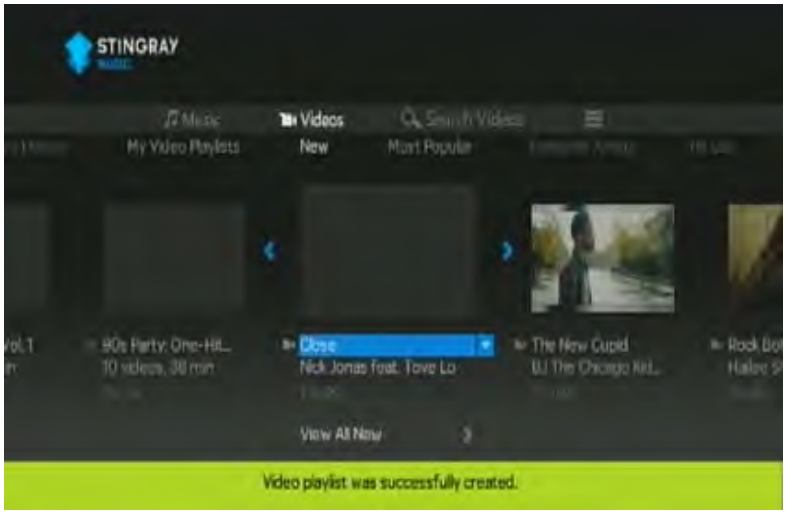
90. Stingray has used and continues to use the Stingray Music Method in a manner that infringes, literally and/or under the doctrine of equivalents, at least claim 1 of the '045 Patent. Specifically, through the Stingray Music Method, Stingray directly, and/or in conjunction with one or more intermediaries or agents, performs a video-on-demand method.

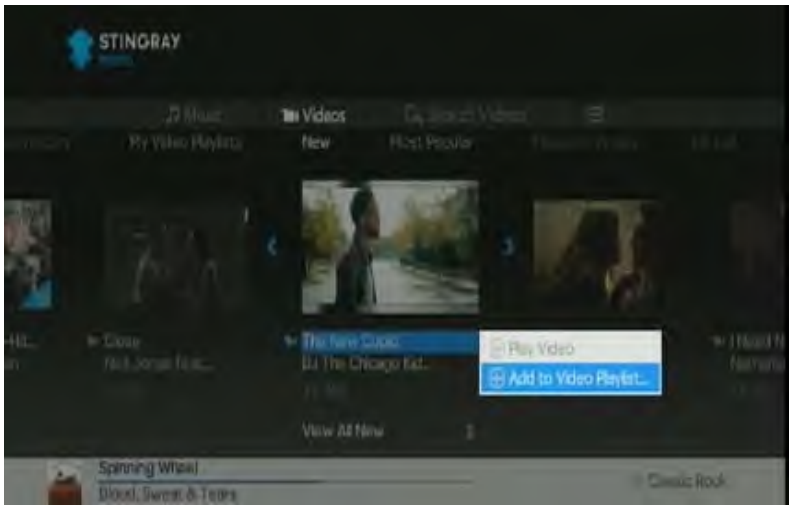


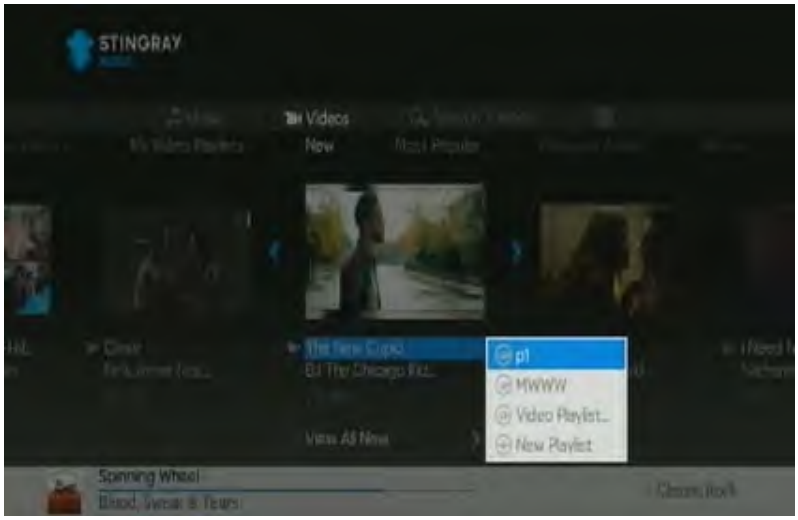


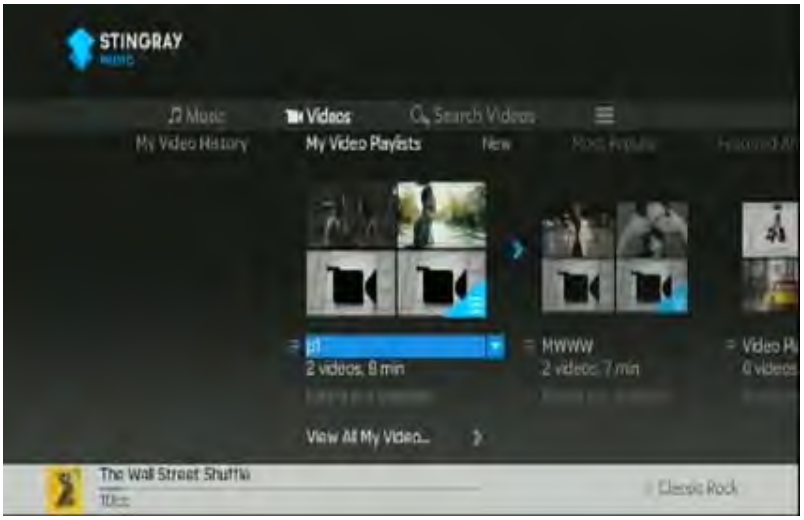
91. The Stingray Music Method creates a playlist (*e.g.*, a playlist entitled "p1"). The playlist comprises a set of media asset identifiers (*e.g.*, song names identifying music videos for songs entitled "Close" and "The New Cupid") selected by a user of a client system (*e.g.*, the device running the Stingray Music app). Each media asset identifier included in the set of media asset identifiers identifies a media asset (*e.g.*, each of the song names in the playlist entitled "p1" identifies a music video for a song entitled "Close" or "The New Cupid").



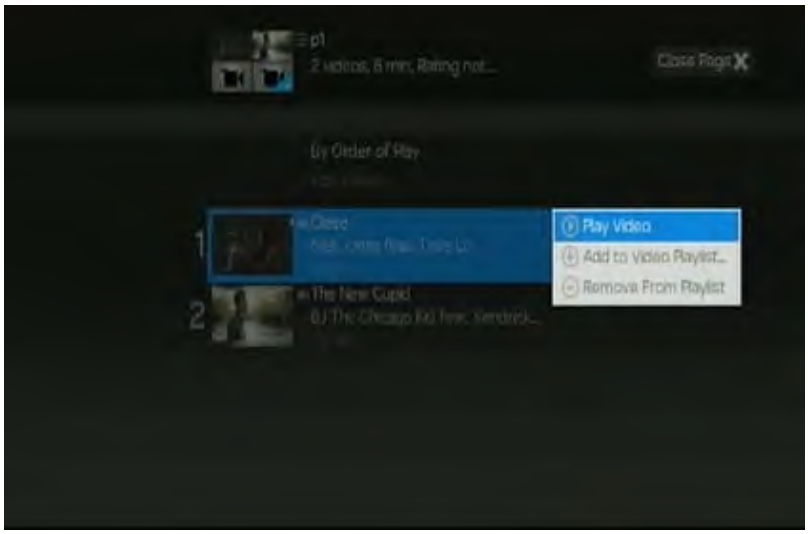

STINGRAY
Videos
New
Most Popular
90s Party: One-Hit...
10 videos, 30 min
Close
Nick Jonas feat. Tove Lo
The New Cupid
DJ The Chicago Kid...
View All New
Video playlist was successfully created.


STINGRAY
Videos
New
Most Popular
Play Video
Add to Video Playlist...
View All New
Spinning Wheel
Blood, Sweat & Tears
Classic Rock

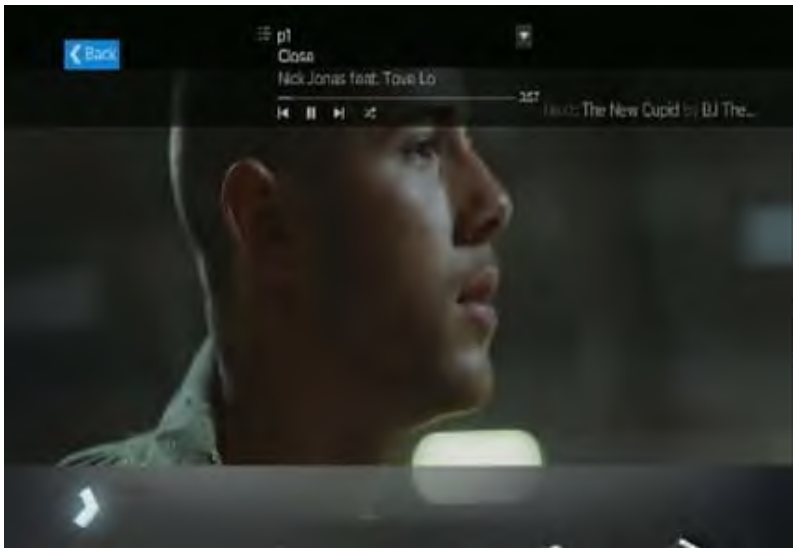

STINGRAY
Videos
New
p1
MWWW
Video Playlist...
New Playlist
Spinning Wheel
Blood, Sweat & Tears



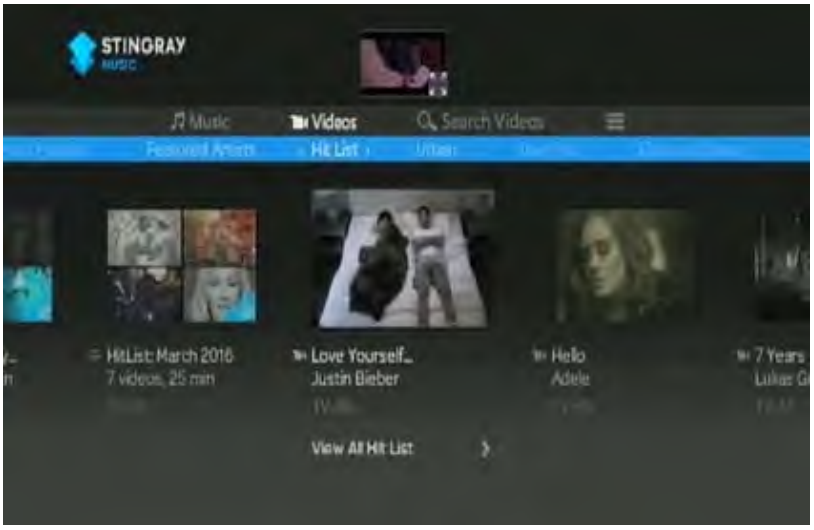
92. The Stingray Music Method receives information transmitted by the client system (*e.g.*, the device running the Stingray Music app). The received information indicates that a user of the client system desires to view a media asset (*e.g.*, the music video for the song entitled "Close") identified by a media asset identifier (*e.g.*, the song name identifying a music video for the song entitled "Close") included in the playlist (*e.g.*, the playlist entitled "p1").



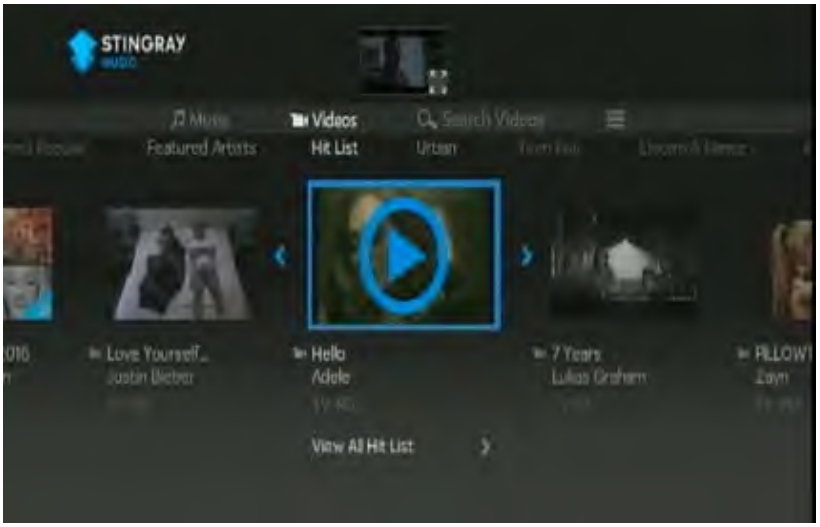
93. The Stingray Music Method, in response to receiving the information, transmits to the client system (*e.g.*, the device running the Stingray Music app) the media asset desired by the user (*e.g.*, the music video for the song entitled "Close").



94. The Stingray Music Method transmits to the client system (*e.g.*, the device running the Stingray Music app) a video identifier (*e.g.*, a thumbnail identifying a music video for the song entitled "Hello") while transmitting to the client system the desired media asset (*e.g.*, the music video for the song entitled "Close," which continues to play at the top center of the Stingray Music app screen), the video identifier identifying a video (*e.g.*, the music video for the song entitled "Hello").



95. The Stingray Music Method, while the client system (*e.g.*, the device running the Stingray Music app) is playing the desired media asset (*e.g.*, the music video for the song entitled "Close," which plays at the top center of the Stingray Music app screen), (a) enables the user of the client system to indicate that the user desires to view the video identified by the video identifier (*e.g.*, the music video for the song entitled "Hello") and then (b) receives from the client system a message comprising information indicating that the user desires to view the video identified by the video identifier (*e.g.*, the music video for the song entitled "Hello"). The message is received while at least a portion of the media asset is being transmitted to the client system (*e.g.*, while at least a portion of the music video for the song entitled "Close" plays at the top center of the Stingray Music app screen).



96. The Stingray Music Method, in response to receiving the message from the client system (*e.g.*, the device running the Stingray Music app), ceases transmitting to the client system the media asset (*e.g.*, the music video for the song entitled "Close") and transmits to the client system video data corresponding to the video identified by the video identifier (*e.g.*, video data corresponding to the music video for the song entitled "Hello").



97. Stingray has used and continues to use the Stingray Music System in a manner that also infringes, literally and/or under the doctrine of equivalents, at least claim 6 of the '045 Patent. Stingray puts the invention of claim 6 of the '045 Patent into service, *i.e.*, by controlling the Stingray Music System as a whole and obtaining benefit from it. Specifically, through the Stingray Music System, Stingray directly, and/or in conjunction with one or more intermediaries or agents, provides a video-on-demand system.

98. The Stingray Music System includes and/or uses a transmitter.

99. The Stingray Music System includes and/or uses a receiver.

100. The Stingray Music System includes and/or uses a computer system coupled to the transmitter and the receiver, and the computer system is configured to perform a method, as described below.

101. The computer system of the Stingray Music System creates a playlist (*e.g.*, a playlist entitled "p1"). The playlist comprises a set of media asset identifiers (*e.g.*, media asset identifiers identifying music videos for songs entitled "Close" and "The New Cupid") selected

by a user of a client system (*e.g.*, a device running the Stingray Music app). Each media asset identifier included in the set of media asset identifiers identifies a media asset (*e.g.*, each of the song names in the playlist entitled "p1" identifies a music video for a song entitled "Close" or "The New Cupid").

102. The computer system of the Stingray Music System, in response to receiving from the client system (*e.g.*, the device running the Stingray Music app) information indicating that a user of the client system desires to view a media asset (*e.g.*, the music video for the song entitled "Close") identified by a media asset identifier (*e.g.*, the song name identifying the music video for the song entitled "Close") included in the playlist (*e.g.*, the playlist entitled "p1"), transmits to the client system the media asset desired by the user (*e.g.*, the music video for the song entitled "Close").

103. The computer system of the Stingray Music System transmits to the client system (*e.g.*, the device running the Stingray Music app) a video identifier (*e.g.*, a thumbnail identifying a music video for the song entitled "Hello") while transmitting to the client system the desired media asset (*e.g.*, the music video for the song entitled "Close," which continues to play at the top center of the Stingray Music app screen), the video identifier identifying a video (*e.g.*, the music video for the song entitled "Hello").

104. The computer system of the Stingray Music System, while the client system (*e.g.*, the device running the Stingray Music app) is playing the desired media asset (*e.g.*, the music video for the song entitled "Close," which plays at the top center of the Stingray Music app screen), (a) enables the user of the client system to indicate that the user desires to view the video identified by the video identifier (*e.g.*, the music video for the song entitled "Hello").

105. The computer system of the Stingray Music System then (b) in response to receiving from the client system (*e.g.*, the device running the Stingray Music app) a message comprising information indicating that the user desires to view the video identified by the video identifier (*e.g.*, the music video for the song entitled "Hello"), ceases transmitting to the client system the media asset (*e.g.*, the music video for the song entitled "Close") and transmits to the client system video data corresponding to the video identified by the video identifier (*e.g.*, video data corresponding to the music video for the song entitled "Hello").

106. Stingray has used and continues to use the Stingray Music Method in a manner that also infringes, literally and/or under the doctrine of equivalents, at least claim 11 of the '045 Patent. Specifically, through the Stingray Music Method, Stingray directly, and/or in conjunction with one or more intermediaries or agents, performs a video-on-demand method. The Stingray Music Method provides access to a plurality of streaming music channels associated with a genre of music.

107. The Stingray Music Method transmits simultaneously to a plurality of client systems (*e.g.*, devices running the Stingray Music app) audio data corresponding to the selected song (*e.g.*, the song "Back on the Chain Gang" or "Workin' for MCA"). Each of the plurality of client systems is configured to use the audio data to play the song (*e.g.*, the song "Back on the Chain Gang" or "Workin' for MCA") so that each user of each of the plurality of client systems can listen to the song. The plurality of client systems includes a first client system and a second client system (*e.g.*, first and second devices running the Stingray Music app).

108. The Stingray Music Method, while transmitting the audio data (*e.g.*, the audio data for the song "Workin' for MCA") to the plurality of client systems (*e.g.*, the devices running the Stingray Music app), transmits to the first client system (*e.g.*, the first device running the

Stingray Music app) a video identifier identifying a video (*e.g.*, a thumbnail identifying a music video for the song "Close").

109. The Stingray Music Method, while the first client system (*e.g.*, the first device running the Stingray Music app) is playing the song (*e.g.*, the song "Workin' for MCA"), (a) enables the user of the first client system to indicate that the user desires to view the video identified by the video identifier (*e.g.*, the music video for the song "Close") and then (b) receives from the first client system a message comprising information indicating that the user desires to view the video identified by the video identifier (*e.g.*, the music video for the song "Close"). The message is received while at least a portion of the audio data (*e.g.*, the audio data for the song "Workin' for MCA") is being transmitted to the first client system.

110. The Stingray Music Method, in response to receiving the message from the first client system (*e.g.*, the first device running the Stingray Music app), transmits to the first client system video data corresponding to the video identified by the video identifier (*e.g.*, video data corresponding to the music video for the song "Close").

111. Stingray has used and continues to use the Stingray Music System in a manner that infringes, literally and/or under the doctrine of equivalents, at least claim 16 of the '045 Patent. Stingray puts the invention of claim 16 of the '045 Patent into service, *i.e.*, by controlling Stingray Music System as a whole and obtaining benefit from it. Specifically, through the Stingray Music System, Stingray directly, and/or in conjunction with one or more intermediaries or agents, provides a video-on-demand system.

112. The Stingray Music System includes and/or uses a transmitter.

113. The Stingray Music System includes and/or uses a receiver.

114. The Stingray Music System includes and/or uses a computer system coupled to the transmitter and the receiver, and the computer system is configured to perform a method, as described below.

115. The computer system of the Stingray Music System selects a song (*e.g.*, the song "Back on the Chain Gang" or "Workin' for MCA") for one of a plurality of music channels (*e.g.*, the "Classic Rock" channel). The one of the plurality of music channels (*e.g.*, the "Classic Rock" channel) is associated with a genre of music (*e.g.*, the classic rock genre).

116. The computer system of the Stingray Music System transmits simultaneously to a plurality of client systems (*e.g.*, devices running the Stingray Music app) audio data corresponding to the selected song (*e.g.*, the song "Back on the Chain Gang" or "Workin' for MCA"). Each of the plurality of client systems is configured to use the audio data to play the song (*e.g.*, the song "Back on the Chain Gang" or "Workin' for MCA") so that each user of each of the plurality of client systems can listen to the song. The plurality of client systems includes a first client system and a second client system (*e.g.*, first and second devices running the Stingray Music app).

117. The computer system of the Stingray Music System, while transmitting the audio data (*e.g.*, the audio data for the song "Workin' for MCA") to the plurality of client systems (*e.g.*, the devices running the Stingray Music app), transmits to the first client system (*e.g.*, the first device running the Stingray Music app) a video identifier identifying a video (*e.g.*, a thumbnail identifying a music video for the song "Close").

118. The computer system of the Stingray Music System, while the first client system (*e.g.*, the first device running the Stingray Music app) is playing the song (*e.g.*, the song "Workin' for MCA"), (a) enables the user of the first client system to indicate that the user

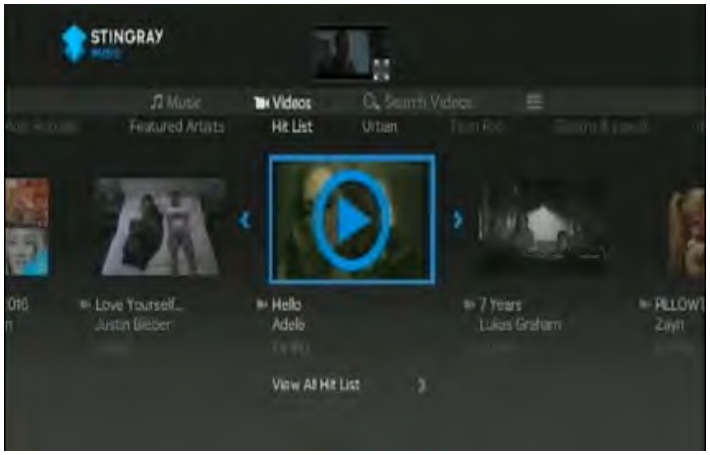
desires to view the video identified by the video identifier (*e.g.*, the music video for the song "Close") and then (b) in response to receiving from the first client system a message comprising information indicating that the user desires to view the video identified by the video identifier (*e.g.*, the music video for the song "Close"), transmits to the first client system video data corresponding to the video identified by the video identifier (*e.g.*, video data corresponding to the music video for the song "Close").

U.S. Patent No. 9,414,121

119. Stingray has used and continues to use the Stingray Music System in a manner that infringes, literally and/or under the doctrine of equivalents, at least claim 1 of the '121 Patent. Stingray puts the invention of claim 1 of the '121 Patent into service, *i.e.*, by controlling the Stingray Music System as a whole and obtaining benefit from it. Specifically, through the Stingray Music System, Stingray directly, and/or in conjunction with one or more intermediaries or agents (*e.g.*, AT&T using (i) a UbiquiCAST server provided by Stingray, (ii) the AT&T U-verse® system provided by AT&T, and (iii) a set top box provided by AT&T), provides a system for providing an on-demand, personalized media service and a broadcast service to a set-top-box.



MC-EGLA-000753



120. The Stingray Music System includes/uses a distribution network (*e.g.*, AT&T's U-verse® distribution network). The set-top-box (*e.g.*, the AT&T set-top-box) is connected to the distribution network.

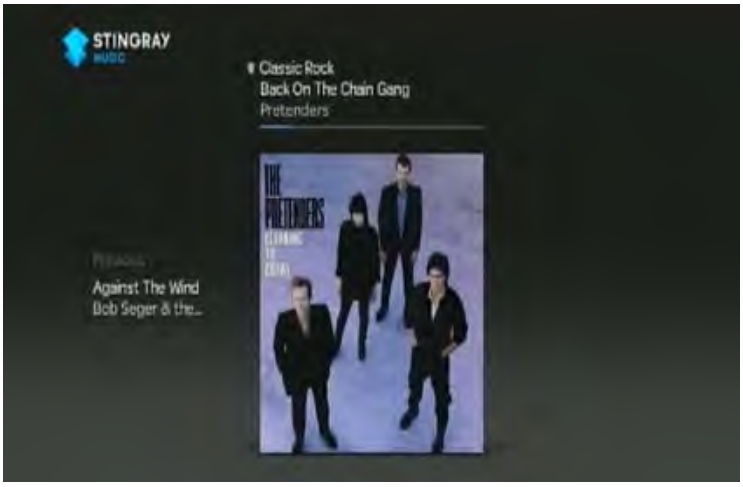
121. The Stingray Music System transmits a plurality of media channels (*e.g.*, the streaming music channels available using the Stingray music app on AT&T U-verse®).

122. The Stingray Music System includes/uses a distribution system including a transmission system operable to transmit via the distribution network (*e.g.*, AT&T's U-verse® distribution network) a media channel (*e.g.*, a "Classic Rock" media channel) comprising a stream of audio and video data (*e.g.*, audio data for the song "Back on the Chain Gang" or "Workin' for MCA" and video data including song title, artist name, and album art data).

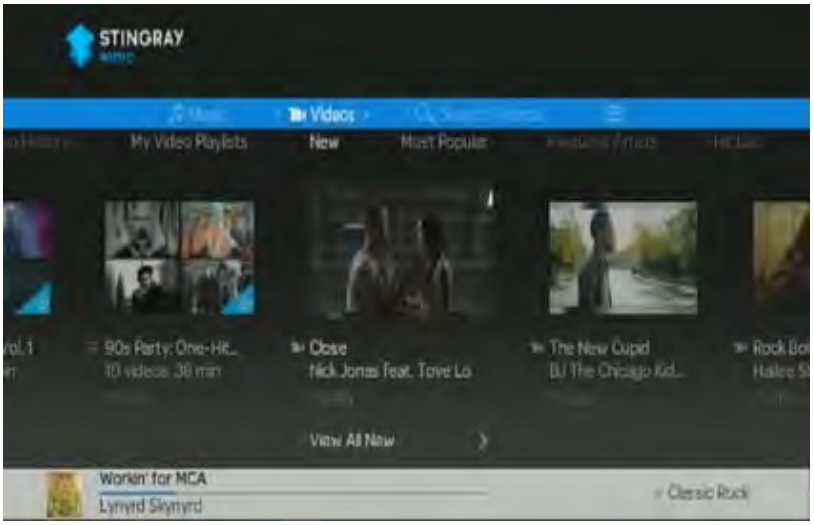
123. In the Stingray Music System, the set-top-box is operable to receive the media channel (*e.g.*, a "Classic Rock" media channel) via the distribution network.

124. In the Stingray Music System, the set-top-box is operable to reproduce the stream of audio data (*e.g.*, audio data for the song "Back on the Chain Gang" or "Workin' for MCA") included in the received media channel (*e.g.*, the "Classic Rock" media channel) for a user of the client system (*e.g.*, the device running the Stingray Music app) to hear.

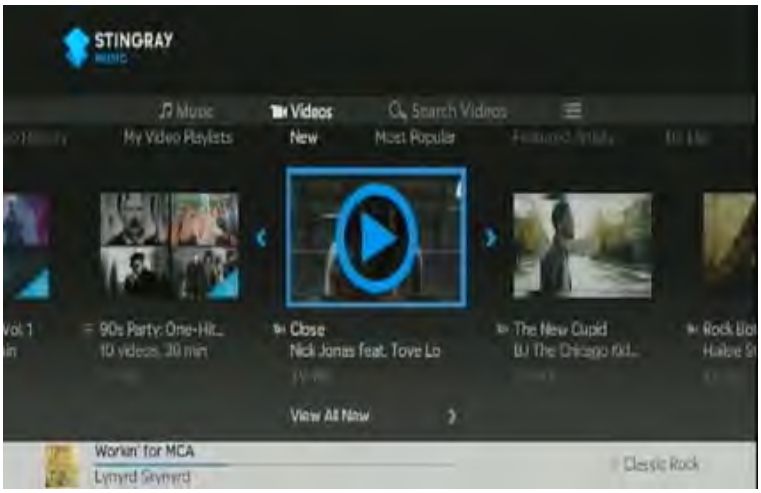
125. In the Stingray Music System, the set-top-box is operable to display video corresponding to the stream of video data (*e.g.*, video corresponding to the song title, artist name, and album art data for the song "Back on the Chain Gang" or "Workin' for MCA") included in the received media channel (*e.g.*, the "Classic Rock" media channel) on a display device for the user to see.



126. In the Stingray Music System, the set-top-box is operable to receive via the distribution network video identifier information comprising an identifier (*e.g.*, a thumbnail or title identifying a music video for the song entitled "Close") for identifying an available on-demand video (*e.g.*, the music video for the song entitled "Close") while displaying on the display device the video corresponding to the stream of video data (*e.g.*, the video corresponding to the song title, artist name, and album art data) included in the received media channel (*e.g.*, the "Classic Rock" media channel).



127. In the Stingray Music System, the set-top-box is operable to display a user selectable element (*e.g.*, a thumbnail image for the music video for the song entitled "Close") for requesting the available on-demand video (*e.g.*, the music video for the song entitled "Close") on the display device so that the user selectable element is displayed on the display device together with at least a portion of the video corresponding to the stream of video data (*e.g.*, video corresponding to the song title, artist name, and album art data for the song "Back on the Chain Gang" or "Workin' for MCA") as a result of receiving the video identifier information (*e.g.*, the thumbnail or title identifying a music video for the song entitled "Close") transmitted to the set-top-box using the distribution network. The user selectable element (*e.g.*, the thumbnail image for the music video for the song entitled "Close") is associated with the available on-demand video (*e.g.*, the music video for the song entitled "Close").

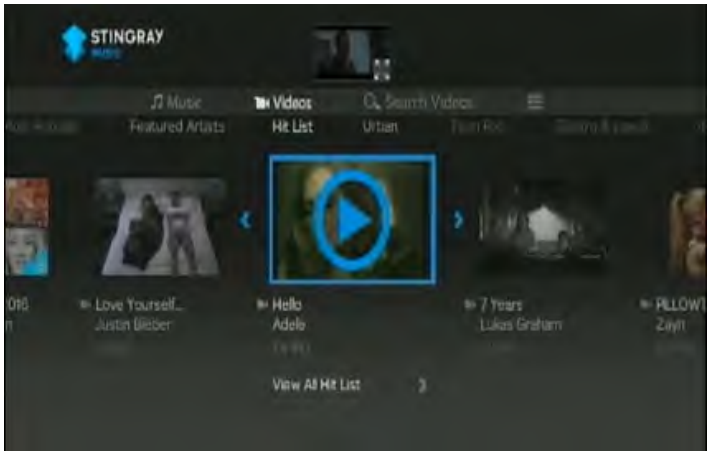


128. In the Stingray Music System, the set-top-box is operable to, in response to the user of the set-top-box selecting the user selectable element (*e.g.*, the thumbnail or title identifying the music video for the song entitled "Close"), causing an on-demand video system (*e.g.*, the Stingray UbiquiCAST music content origin server) to transmit to the set-top-box the available on-demand video (*e.g.*, the music video for the song entitled "Close") by transmitting to the on-demand video system an on-demand request message (*e.g.*, a message indicating that the thumbnail or title identifying the music video for the song entitled "Close" was selected).



129. Stingray has used and continues to use the Stingray Music Method in a manner that infringes, literally and/or under the doctrine of equivalents, at least claim 6 of the '121 Patent. Specifically, through the Stingray Music Method, Stingray directly, and/or in conjunction with one or more intermediaries or agents performs a method for providing an on-demand service to a user of a set-top-box (*e.g.*, an AT&T set-top-box).

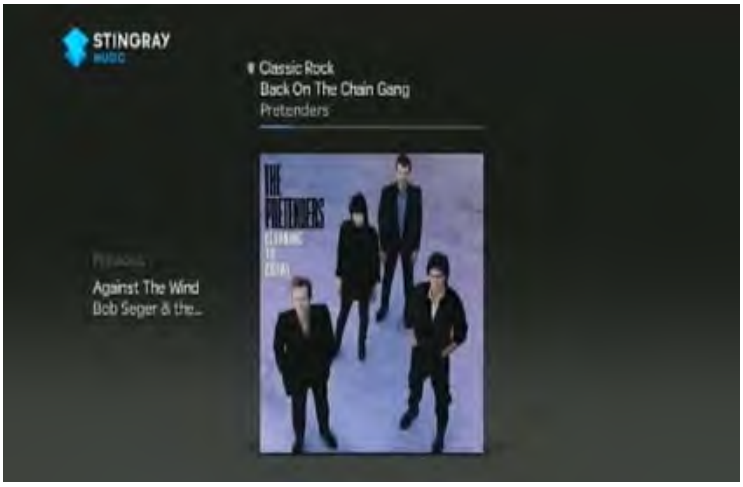




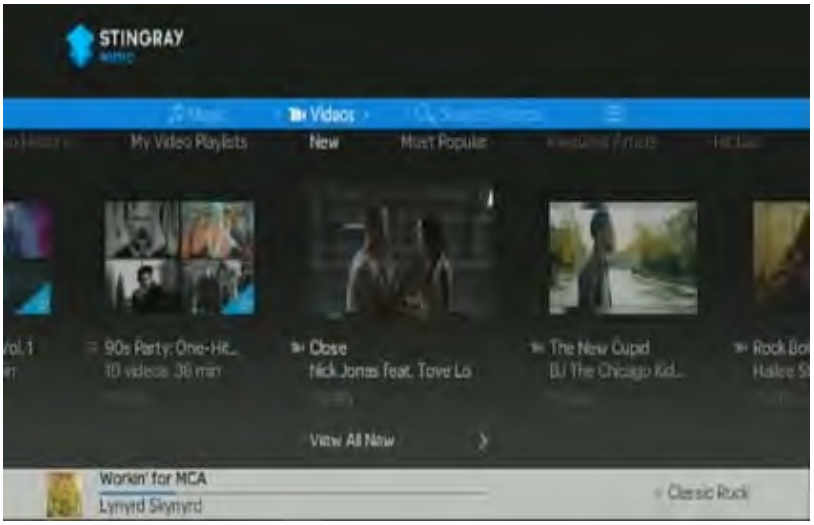
130. In the Stingray Music Method, the set-top-box (*e.g.*, the AT&T set-top-box) receives via a cable connected to a network (*e.g.*, AT&T's U-verse® distribution network) a media channel (*e.g.*, the "Classic Rock" media channel) comprising a stream of audio and video

data (*e.g.*, audio data for the song "Back on the Chain Gang" or "Workin' for MCA" and video data including song title, artist name, and album art data).

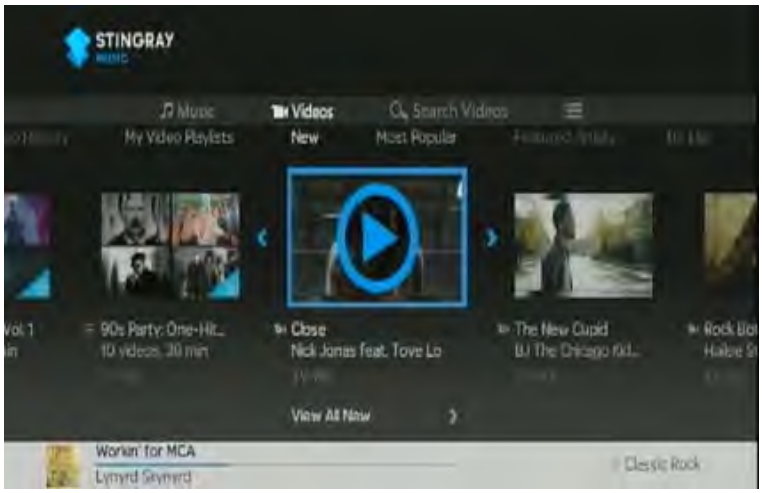
131. In the Stingray Music Method, the set-top-box displays on a display device video corresponding to the video data stream (*e.g.*, video corresponding to the song title, artist name, and album art data for the song "Back on the Chain Gang" or "Workin' for MCA").



132. In the Stingray Music Method, while displaying said video (*e.g.*, the video corresponding to the song title, artist name, and album art data for the song "Back on the Chain Gang" or "Workin' for MCA"), the set-top-box receives video identifier information (*e.g.*, a thumbnail or title identifying a music video for the song entitled "Close") transmitted via the cable connected to the network. The video identifier information comprises an identifier for identifying an available on-demand video (*e.g.*, the music video for the song entitled "Close").



133. In the Stingray Music Method, the set top box displays on the display device, as a result of receiving said video identifier information (*e.g.*, the thumbnail or title identifying the music video for the song entitled "Close"), a user selectable element (*e.g.*, a thumbnail image for the music video for the song entitled "Close") for requesting the available on-demand video (*e.g.*, the music video for the song entitled "Close") while also displaying video corresponding to the video data stream (*e.g.*, the video corresponding to the song title, artist name, and album art data for the song "Back on the Chain Gang" or "Workin' for MCA") so that the user can see the user selectable element (*e.g.*, the thumbnail image for the music video for the song entitled "Close") while also seeing the displayed video corresponding to the video data stream (*e.g.*, the video corresponding to the song title, artist name, and album art data for the song "Back on the Chain Gang" or "Workin' for MCA"). The user selectable element (*e.g.*, the thumbnail image for the music video for the song entitled "Close") is associated with the available on-demand video (*e.g.*, the music video for the song entitled "Close").

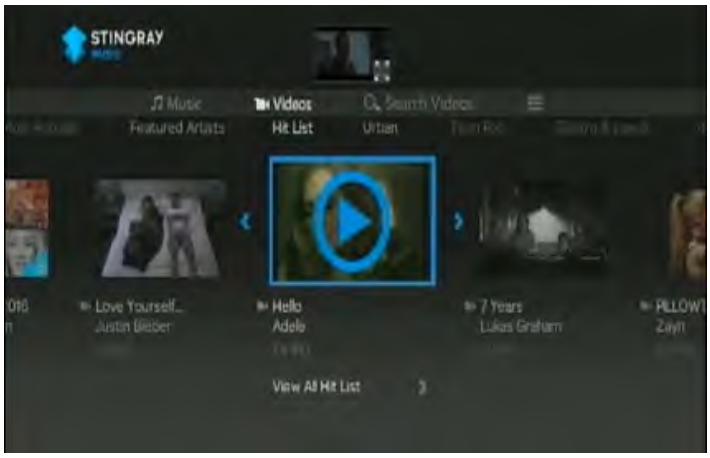


134. In the Stingray Music Method, the set-top-box detects that the user has selected the selectable element (*e.g.*, the thumbnail image for the music video for the song entitled "Close") for requesting the available on-demand video (*e.g.*, the music video for the song entitled "Close").

135. In the Stingray Music Method, in response to detecting that the user has selected the selectable element (*e.g.*, the thumbnail or title identifying the music video for the song entitled "Close"), the set-top-box causes an on-demand video system (*e.g.*, the Stingray UbiquiCAST music content origin server) to transmit to the set-top-box the available on-demand video (*e.g.*, the music video for the song entitled "Close"). Causing the on-demand video system to transmit to the set-top-box the available on-demand video (*e.g.*, the music video for the song entitled "Close") comprises the set-top-box transmitting to the on-demand video system an on-demand request message (*e.g.*, a message indicating that the thumbnail or title identifying the music video for the song entitled "Close" was selected) configured to cause the on-demand video system to transmit to the set-top-box the available on-demand video (*e.g.*, the music video for the song entitled "Close").

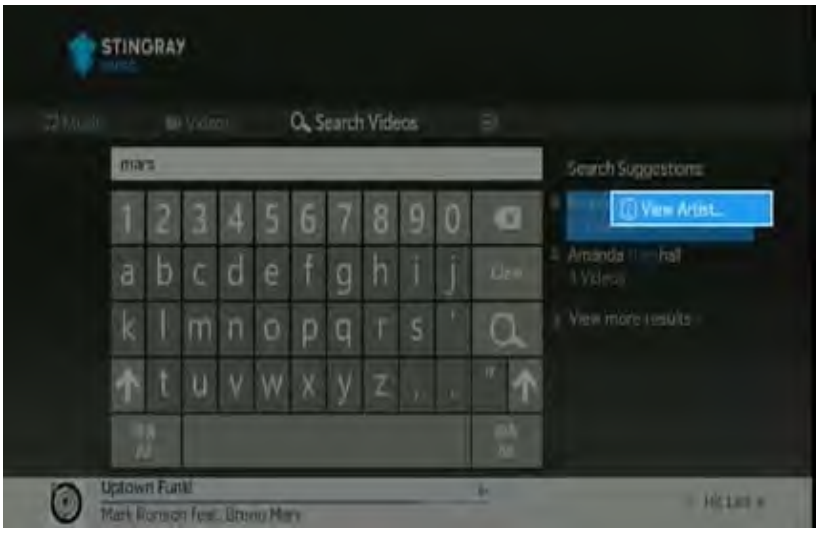
136. Stingray has used and continues to use the Stingray Music Method in a manner that infringes, literally and/or under the doctrine of equivalents, at least claim 14 of the '121 Patent. Specifically, through the Stingray Music Method, Stingray directly, and/or in conjunction with one or more intermediaries or agents (*e.g.*, AT&T, by the AT&T set-top-box) performs a method for providing an on-demand service to a user of a set-top-box (*e.g.*, an AT&T set-top-box).





137. In the Stingray Music Method, the set-top-box (*e.g.*, the AT&T set-top-box) receives via a cable connected to a network (*e.g.*, AT&T's U-verse® distribution network) a media channel (*e.g.*, the "Hit List" media channel) comprising a stream of audio and video data

(*e.g.*, audio corresponding to the song "Uptown Funk!" and video data including song title, artist name, and album art data).



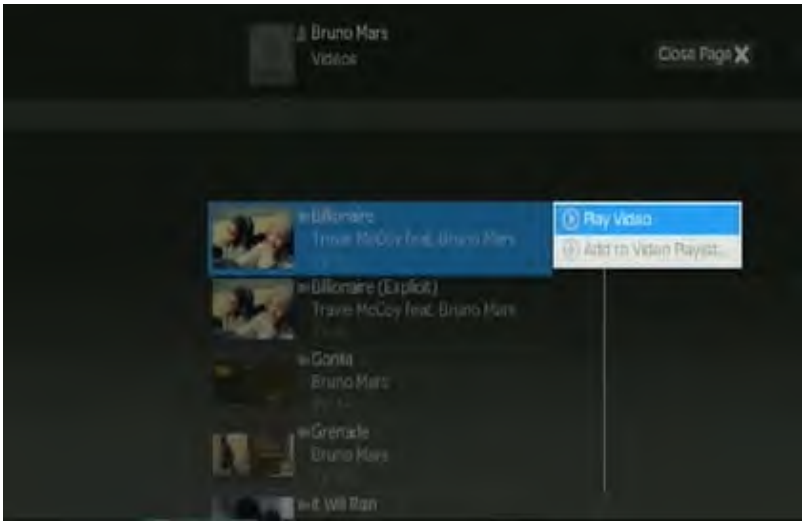
138. In the Stingray Music Method, the set-top-box displays on a display device video corresponding to the video data stream (*e.g.*, video corresponding to the song title, artist name, and album art data for the song "Uptown Funk!").

139. In the Stingray Music Method, while displaying said video (*e.g.*, the video corresponding to the song title, artist name, and album art data for the song "Uptown Funk!"), the set-top-box receives on-demand video information (*e.g.*, search suggestions resulting from the searching on-demand videos for "mars") transmitted via the cable connected to the network.

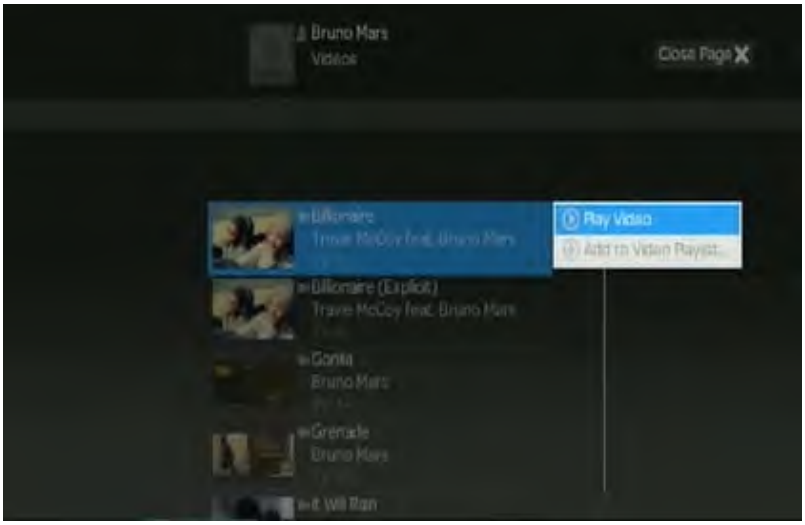
140. In the Stingray Music Method, the set top box displays on the display device, as a result of receiving the on-demand video information (*e.g.*, the search suggestions resulting from the searching on-demand videos for "mars"), a user selectable element (*e.g.*, a user selectable element for the suggested search for Bruno Mars videos) for requesting information identifying a set of available on-demand videos (*e.g.*, the set of 12 available Bruno Mars on-demand videos) while also displaying the video corresponding to the video data stream (*e.g.*, the video corresponding to the song title, artist name, and album art data for the song "Uptown Funk!") so

that the user can see the user selectable element (*e.g.*, the user selectable element for the suggested search for Bruno Mars videos) while also seeing the displayed video corresponding to the video data stream (*e.g.*, the video corresponding to the song title, artist name, and album art data for the song "Uptown Funk!"). The user selectable element (*e.g.*, the user selectable element for the suggested search for Bruno Mars videos) is associated with the set of available on-demand videos (*e.g.*, the set of 12 available Bruno Mars on-demand videos).

141. In the Stingray Music Method, in response to the user of the client system selecting the user selectable element (*e.g.*, the user selectable element for the suggested search for Bruno Mars videos), the set-top-box transmits to an on-demand system (*e.g.*, the Stingray UbiquiCAST music content origin server) an on-demand request message for causing the on-demand system to transmit to the set-top-box the information identifying the set of available on-demand videos (*e.g.*, information identifying the set of 12 available Bruno Mars on-demand videos).



142. In the Stingray Music Method, the set-top-box displays a menu of the available on-demand videos (*e.g.*, a menu of the available Bruno Mars on-demand videos) as a result of receiving the information.



COUNT I
(Infringement of U.S. Patent No. 8,769,602)
(35 U.S. C. § 271(a))

143. Music Choice repeats and re-alleges each and every allegation of paragraphs 1-142 as if fully set forth herein.

144. The ’602 Patent is valid and enforceable.

145. By its use, sale, and/or offer for sale in the United States, and/or importation into the United States, of the Stingray Music System/Method, Stingray has been and is now infringing at least claims 1 and 8 of the ’602 Patent, in the State of Texas, in this judicial district, and elsewhere, in violation of 35 U.S.C. § 271(a).

146. Stingray’s actions are without the consent of Music Choice.

147. Stingray’s infringement has been and is now willful and deliberate. Stingray has and continues to use, sell and/or offer for sale in the United States, and/or import into the United States, the infringing Stingray Music System/Method despite an objectively high likelihood that its actions constituted infringement of the ‘602 Patent. This objectively-defined risk of infringement was known or so obvious that it should have been known to Stingray.

148. As a result of Stingray's actions, Music Choice has suffered and continues to suffer substantial injury. Music Choice has been and will continue to be irreparably harmed unless Stingray's infringement of the '602 Patent is enjoined.

149. Music Choice has been and will continue to be damaged by Stingray's infringement of the '602 Patent, in an amount to be proven at trial.

150. At least by filing and serving the original complaint for patent infringement on June 6, 2016, Music Choice has given Stingray written notice of its infringement.

COUNT II
(Infringement of U.S. Patent No. 9,357,245)
(35 U.S. C. § 271(a))

151. Music Choice repeats and re-alleges each and every allegation of paragraphs 1-150 as if fully set forth herein.

152. The '245 Patent is valid and enforceable.

153. By its use, sale, and/or offer for sale in the United States, and/or importation into the United States, of the Stingray Music System/Method, Stingray has been and is now infringing at least claims 1, 12 and 17 of the '245 Patent, in the State of Texas, in this judicial district, and elsewhere, in violation of 35 U.S.C. § 271(a).

154. Stingray's actions are without the consent of Music Choice.

155. Stingray's infringement has been and is now willful and deliberate. Stingray has and continues to use, sell and/or offer for sale in the United States, and/or import into the United States, the infringing Stingray Music System/Method despite an objectively high likelihood that its actions constituted infringement of the '245 Patent. This objectively-defined risk of infringement was known or so obvious that it should have been known to Stingray.

156. As a result of Stingray's actions, Music Choice has suffered and continues to suffer substantial injury. Music Choice has been and will continue to be irreparably harmed unless Stingray's infringement of the '245 Patent is enjoined.

157. Music Choice has been and will continue to be damaged by Stingray's infringement of the '245 Patent, in an amount to be proven at trial.

158. At least by filing and serving the original complaint for patent infringement on June 6, 2016, Music Choice has given Stingray written notice of its infringement.

COUNT III
(Infringement of U.S. Patent No. 7,320,025)
(35 U.S. C. § 271(a))

159. Music Choice repeats and re-alleges each and every allegation of paragraphs 1-158 as if fully set forth herein.

160. The '025 Patent is valid and enforceable.

161. By its use, sale, and/or offer for sale in the United States, and/or importation into the United States, of the Stingray Music System/Method, Stingray has been and is now infringing at least claims 1 and 8 of the '025 Patent, in the State of Texas, in this judicial district, and elsewhere, in violation of 35 U.S.C. § 271(a).

162. Stingray's actions are without the consent of Music Choice.

163. Stingray's infringement has been and is now willful and deliberate. Stingray has and continues to use, sell and/or offer for sale in the United States, and/or import into the United States, the infringing Stingray Music System/Method despite an objectively high likelihood that its actions constituted infringement of the '025 Patent. This objectively-defined risk of infringement was known or so obvious that it should have been known to Stingray.

164. As a result of Stingray's actions, Music Choice has suffered and continues to suffer substantial injury. Music Choice has been and will continue to be irreparably harmed unless Stingray's infringement of the '025 Patent is enjoined.

165. Music Choice has been and will continue to be damaged by Stingray's infringement of the '025 Patent, in an amount to be proven at trial.

166. At least by filing and serving the original complaint for patent infringement on June 6, 2016, Music Choice has given Stingray written notice of its infringement.

COUNT IV
(Infringement of U.S. Patent No. 9,351,045)
(35 U.S. C. § 271(a))

167. Music Choice repeats and re-alleges each and every allegation of paragraphs 1-166 as if fully set forth herein.

168. The '045 Patent is valid and enforceable.

169. By its use, sale, and/or offer for sale in the United States, and/or importation into the United States, of the Stingray Music System/Method, Stingray has been and is now infringing at least claims 1, 6, 11 and 16 of the '045 Patent, in the State of Texas, in this judicial district, and elsewhere, in violation of 35 U.S.C. § 271(a).

170. Stingray's actions are without the consent of Music Choice.

171. Stingray's infringement has been and is now willful and deliberate. Stingray has and continues to use, sell and/or offer for sale in the United States, and/or import into the United States, the infringing Stingray Music System/Method despite an objectively high likelihood that its actions constituted infringement of the '045 Patent. This objectively-defined risk of infringement was known or so obvious that it should have been known to Stingray.

172. As a result of Stingray's actions, Music Choice has suffered and continues to suffer substantial injury. Music Choice has been and will continue to be irreparably harmed unless Stingray's infringement of the '045 Patent is enjoined.

173. Music Choice has been and will continue to be damaged by Stingray's infringement of the '045 Patent, in an amount to be proven at trial.

174. At least by filing and serving the original complaint for patent infringement on June 6, 2016, Music Choice has given Stingray written notice of its infringement.

COUNT V
(Infringement of U.S. Patent No. 9,414,121)
(35 U.S. C. § 271(a))

175. Music Choice repeats and re-alleges each and every allegation of paragraphs 1-174 as if fully set forth herein.

176. The '121 Patent is valid and enforceable.

177. By its use, sale, and/or offer for sale in the United States, and/or importation into the United States, of the Stingray Music System/Method, Stingray has been and is now infringing at least claims 1, 6, and 14 of the '121 Patent, in the State of Texas, in this judicial district, and elsewhere, in violation of 35 U.S.C. § 271(a).

178. Stingray's actions are without the consent of Music Choice.

179. Stingray's infringement has been and is now willful and deliberate. Stingray has and continues to use, sell and/or offer for sale in the United States, and/or import into the United States, the infringing Stingray Music System/Method despite an objectively high likelihood that its actions constituted infringement of the '121 Patent. This objectively-defined risk of infringement was known or so obvious that it should have been known to Stingray.

180. As a result of Stingray's actions, Music Choice has suffered and continues to suffer substantial injury. Music Choice has been and will continue to be irreparably harmed unless Stingray's infringement of the '121 Patent is enjoined.

181. Music Choice has been and will continue to be damaged by Stingray's infringement of the '121 Patent, in an amount to be proven at trial.

182. At least by filing and serving the first amended complaint for patent infringement, Music Choice has given Stingray written notice of its infringement.

JURY DEMAND

183. Music Choice hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Music Choice prays that the Court enter judgment against Stingray and in favor of Music Choice, as follows:

A. Finding that the '602 Patent, the '245 Patent, the '025 Patent, the '045 Patent, and the '121 Patent were duly and lawfully issued, and are valid and enforceable.

B. Finding that Stingray has infringed one or more of the claims of the '602 Patent, the '245 Patent, the '025 Patent, the '045 Patent, and the '121 Patent;

C. Awarding damages to Music Choice in accordance with 35 U.S.C. § 284, including pre-judgment and post-judgment interest, to compensate Music Choice for Stingray's infringement of the '602 Patent, the '245 Patent, the '025 Patent, the '045 Patent, and the '121 Patent;

D. Ordering preliminary and permanent injunctive relief restraining and enjoining Stingray and its officers, agents, attorneys, employees, and those acting in privity or active concert with Stingray, from infringement of the ’602 Patent, the ’245 Patent, the ’025 Patent, the ’045 Patent, and the ’121 Patent for the full terms thereof;

E. Finding that this case is exceptional pursuant to 35 U.S.C. § 285;

F. Awarding Music Choice its costs and attorneys’ fees; and

G. Awarding Music Choice such other and further relief as this Court deems just and proper.

DATED: September 2, 2016

Respectfully submitted,

By: /s/ Collin Maloney

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on September 2, 2016.

/s/ Collin Maloney

US009357245B1

(12) **United States Patent**
Del Beccaro et al.

(10) **Patent No.: US 9,357,245 B1**
(45) **Date of Patent: *May 31, 2016**

(54) **SYSTEM AND METHOD FOR PROVIDING AN INTERACTIVE, VISUAL COMPLEMENT TO AN AUDIO PROGRAM**

(71) Applicant: **Music Choice**, Horsham, PA (US)

(72) Inventors: **David J. Del Beccaro**, Jenkintown, PA (US); **Stuart H. Farber**, Horsham, PA (US); **Kelley L. Giannetti**, Gilbertsville, PA (US); **Donna M. O'Neill**, Ambler, PA (US); **Jeremy C. Rosenberg**, Huntingdon Valley, PA (US); **Robert M. Steinberg**, Horsham, PA (US); **Christina B. Tancredi**, Ambler, PA (US); **Ronald M. Yurman**, Short Hills, NJ (US)

(73) Assignee: **Music Choice**, Horsham, PA (US)

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days.

This patent is subject to a terminal disclaimer.

(21) Appl. No.: **14/635,619**

(22) Filed: **Mar. 2, 2015**

Related U.S. Application Data

(63) Continuation of application No. 14/314,379, filed on Jun. 25, 2014, which is a continuation of application No. 13/082,791, filed on Apr. 8, 2011, now Pat. No. 8,769,602, which is a continuation of application No.

(Continued)

(51) **Int. Cl.**
H04N 7/10 (2006.01)
H04N 7/025 (2006.01)
(Continued)

(52) **U.S. Cl.**
CPC ***H04N 21/2368*** (2013.01); ***H04N 21/4394*** (2013.01); ***H04N 21/8113*** (2013.01); ***H04N 21/8133*** (2013.01)

(58) **Field of Classification Search**
CPC H04N 21/812; H04N 21/4331; H04N 21/435; H04N 21/235; H04N 7/165; H04N 7/17318; H04N 21/25891; H04N 21/44222; H04N 21/6582; H04N 2007/1739; H04N 7/173; H04N 5/44543; H04N 5/50; H04N 7/22; G06Q 30/02; G06Q 10/10; H04L 29/08072; H04L 29/06; H04L 29/0809; H04L 29/08981; H04L 29/08117; H04H 60/66; H04H 60/43; H04H 60/33
See application file for complete search history.

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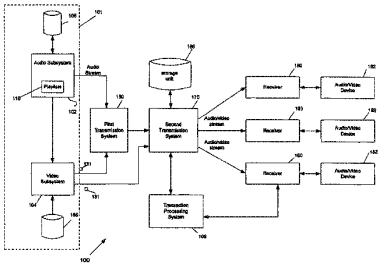
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Primary Examiner — Ngoc Vu
(74) *Attorney, Agent, or Firm* — Rothwell, Figg, Ernst & Manbeck, P.C.

(57) **ABSTRACT**

A system and method for providing an interactive, visual complement to one or more audio programs. In one aspect, the system comprises an audio subsystem for generating an audio signal corresponding to a sound recording. The system also comprises a video subsystem for generating a video image specification based, at least in part, on the sound recording. In one aspect, the audio signal and video image specification are transmitted to an audio/video signal transmission system. The transmission system receives the video image specification and generates a video signal that conforms to the video image specification. The video signal and the audio signal are transmitted to at least one consumer receiver. In this way, the system provides a visual complement to an audio program.

17 Claims, 21 Drawing Sheets



MC-EGLA-000773

Related U.S. Application Data

11/837,772, filed on Aug. 13, 2007, now Pat. No. 7,926,085, which is a continuation of application No. 10/066,793, filed on Feb. 6, 2002, now Pat. No. 7,275,256.

(60) Provisional application No. 60/315,046, filed on Aug. 28, 2001.

(51) **Int. Cl.**

H04N 21/2368	(2011.01)
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H04N 21/439	(2011.01)

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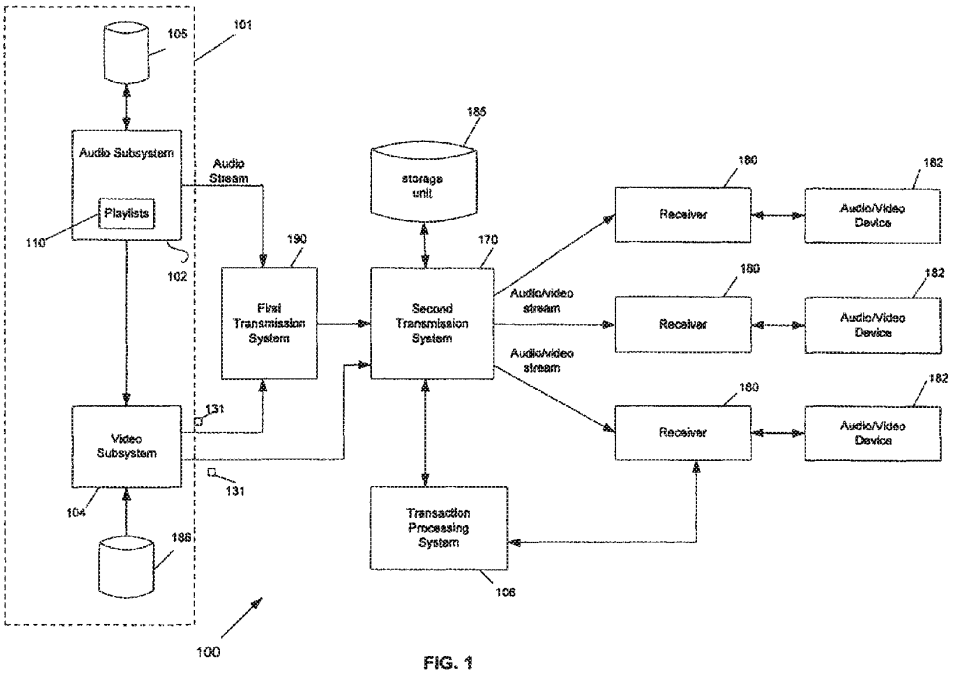

101
105
Audio Subsystem
Playlists
110
102
Audio Stream
190
First Transmission System
185
storage unit
170
Second Transmission System
Audio/Video stream
Audio/Video stream
180
Receiver
182
Audio/Video Device
180
Receiver
182
Audio/Video Device
180
Receiver
182
Audio/Video Device
131
Video Subsystem
131
104
188
Transaction Processing System
106
100

FIG. 1

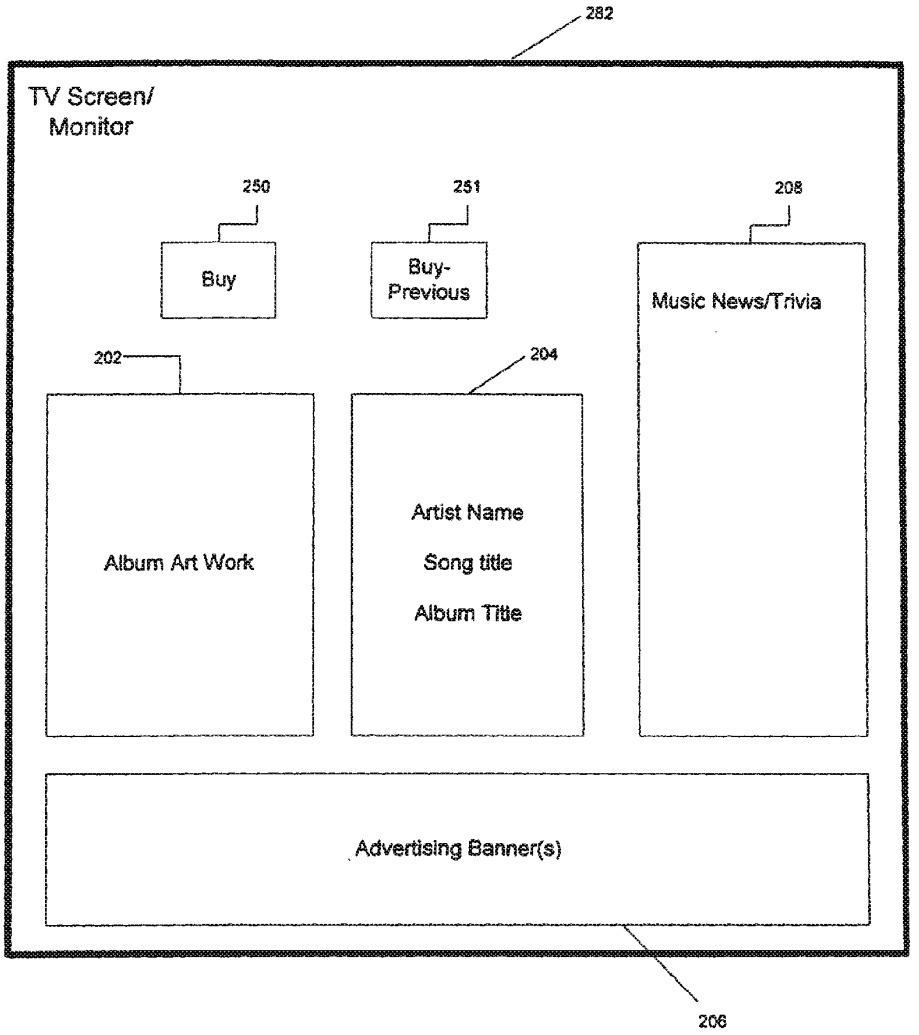

282
TV Screen/
Monitor
250
Buy
251
Buy-
Previous
208
Music News/Trivia
202
Album Art Work
204
Artist Name
Song title
Album Title
Advertising Banner(s)
206

FIG. 2

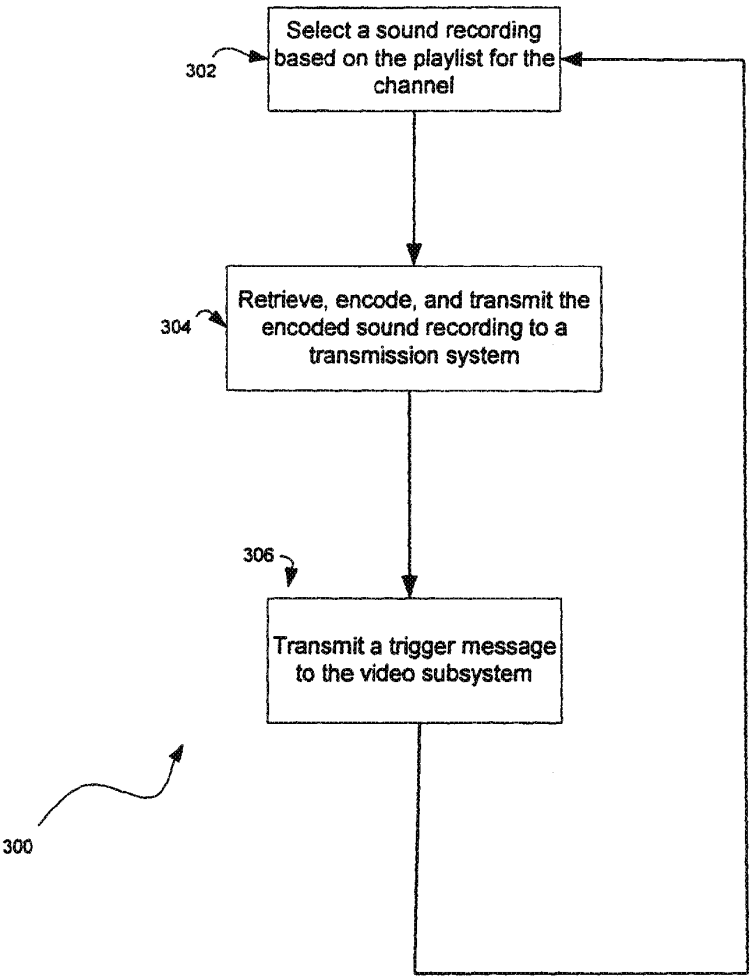

Select a sound recording based on the playlist for the channel
302
Retrieve, encode, and transmit the encoded sound recording to a transmission system
304
306
Transmit a trigger message to the video subsystem
300

FIG. 3A

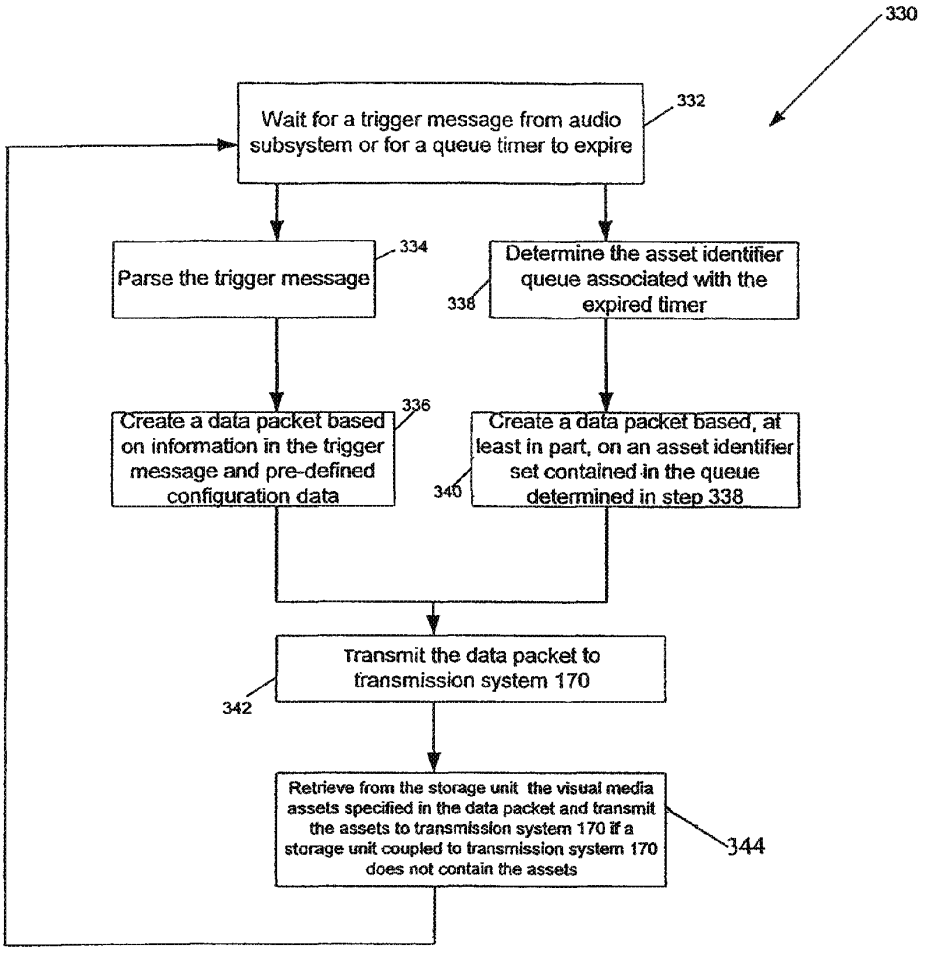

330
Wait for a trigger message from audio subsystem or for a queue timer to expire
332
Parse the trigger message
334
Determine the asset identifier queue associated with the expired timer
338
Create a data packet based on information in the trigger message and pre-defined configuration data
336
Create a data packet based, at least in part, on an asset identifier set contained in the queue determined in step 338
340
Transmit the data packet to transmission system 170
342
Retrieve from the storage unit the visual media assets specified in the data packet and transmit the assets to transmission system 170 if a storage unit coupled to transmission system 170 does not contain the assets
344

FIG. 3B

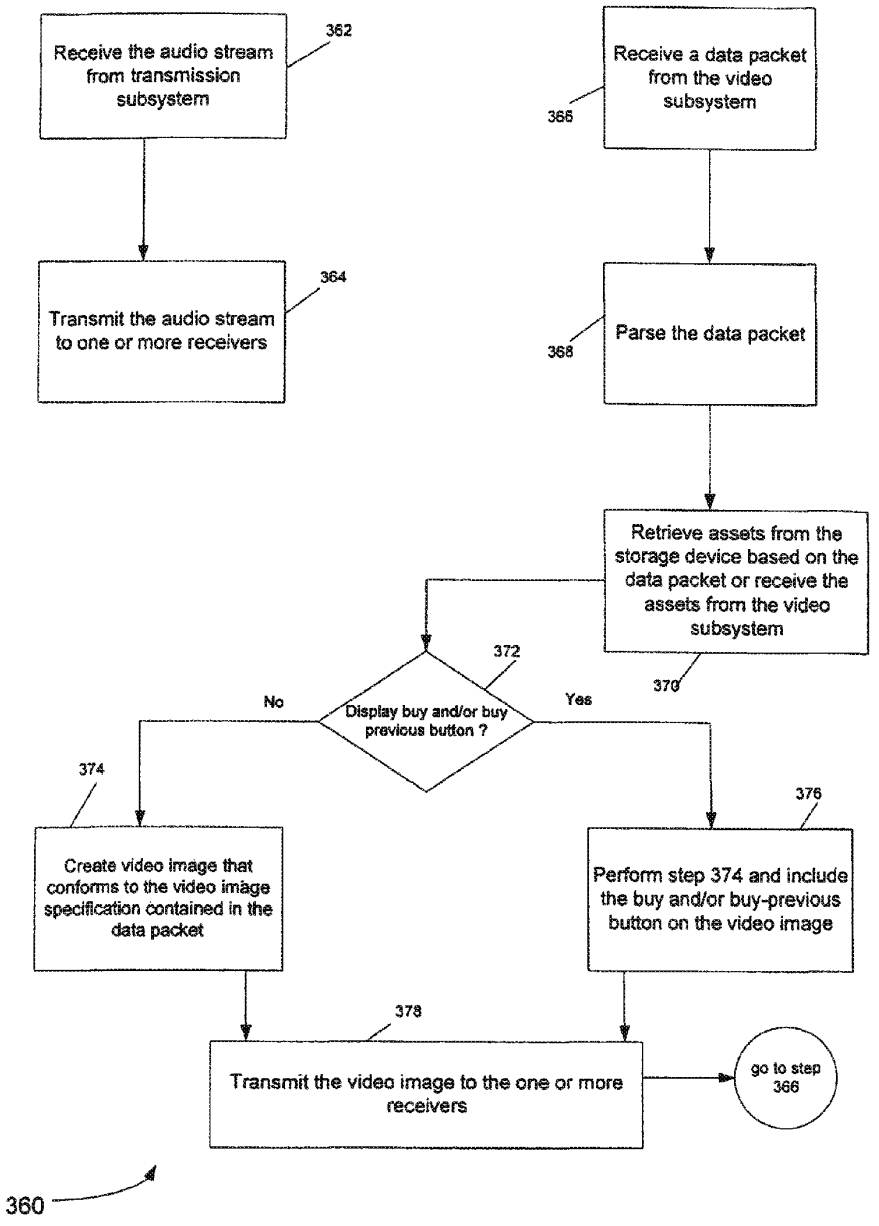

Receive the audio stream from transmission subsystem
362
Transmit the audio stream to one or more receivers
364
Receive a data packet from the video subsystem
366
Parse the data packet
368
Retrieve assets from the storage device based on the data packet or receive the assets from the video subsystem
370
Display buy and/or buy previous button ?
372
No
Yes
Create video image that conforms to the video image specification contained in the data packet
374
Perform step 374 and include the buy and/or buy-previous button on the video image
376
Transmit the video image to the one or more receivers
378
go to step 366
360

FIG. 3C

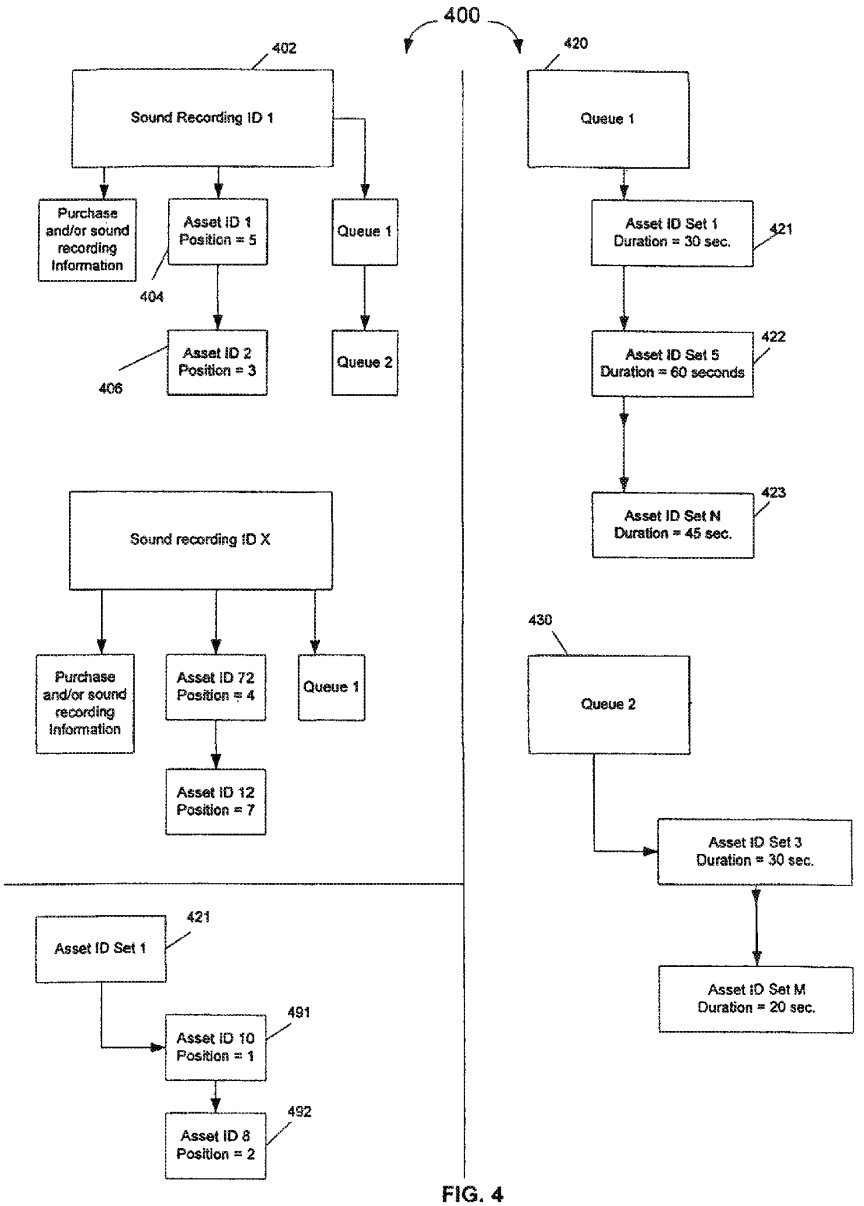


FIG. 4

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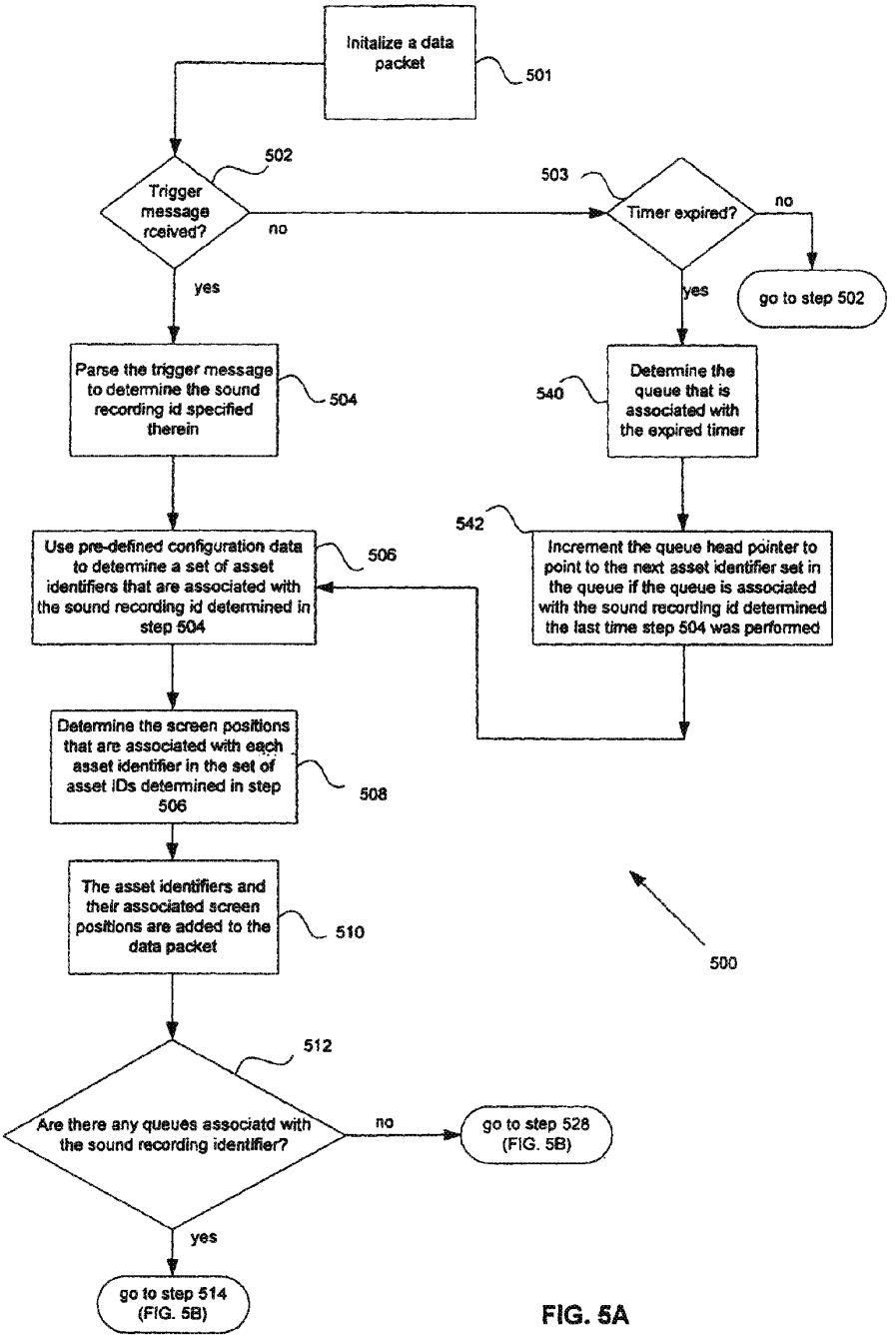

Initalize a data packet
501
502
Trigger message received?
no
yes
503
Timer expired?
no
yes
go to step 502
Parse the trigger message to determine the sound recording id specified therein
504
540
Determine the queue that is associated with the expired timer
542
Increment the queue head pointer to point to the next asset identifier set in the queue if the queue is associated with the sound recording id determined the last time step 504 was performed
Use pre-defined configuration data to determine a set of asset identifiers that are associated with the sound recording id determined in step 504
506
Determine the screen positions that are associated with each asset identifier in the set of asset IDs determined in step 506
508
The asset identifiers and their associated screen positions are added to the data packet
510
500
512
Are there any queues associatd with the sound recording identifier?
no
go to step 528 (FIG. 5B)
yes
go to step 514 (FIG. 5B)

FIG. 5A

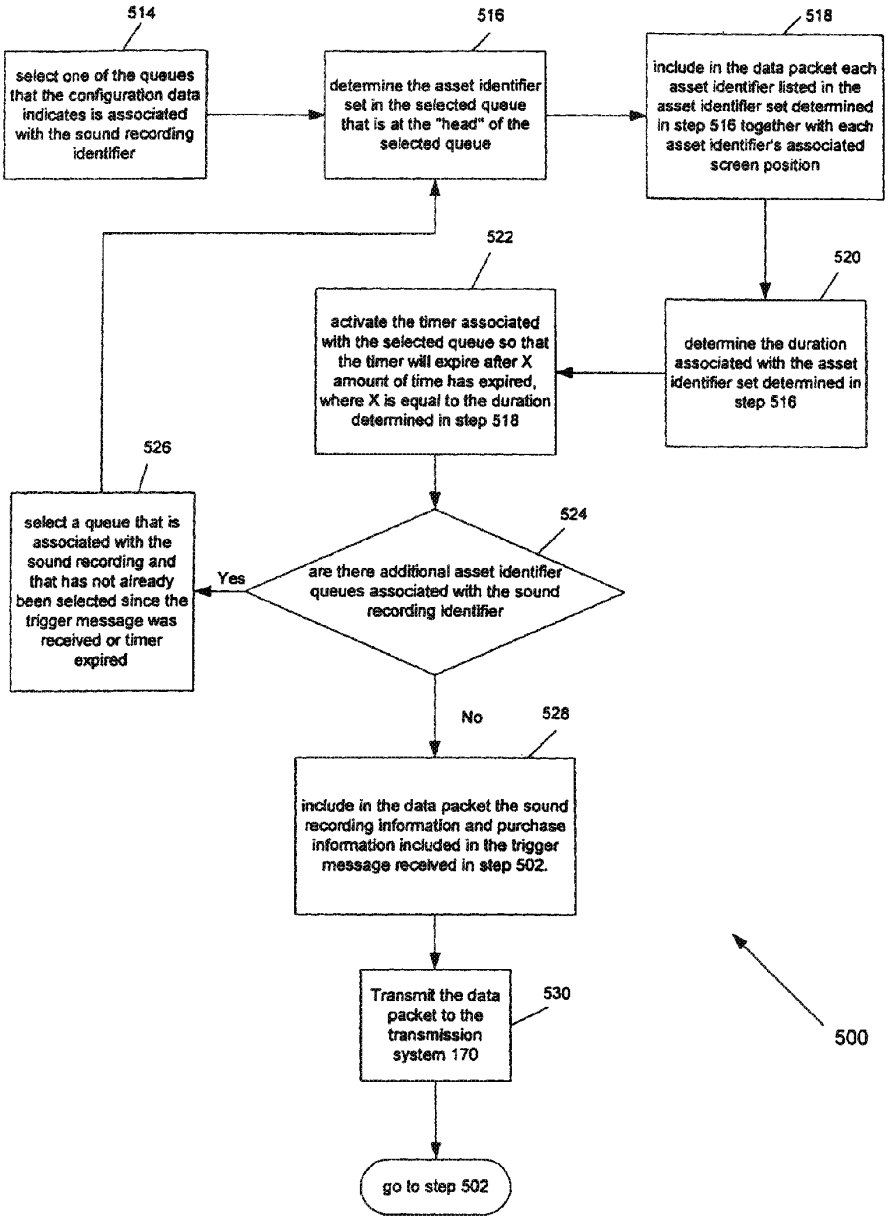


FIG. 5B

MC-EGLA-000784

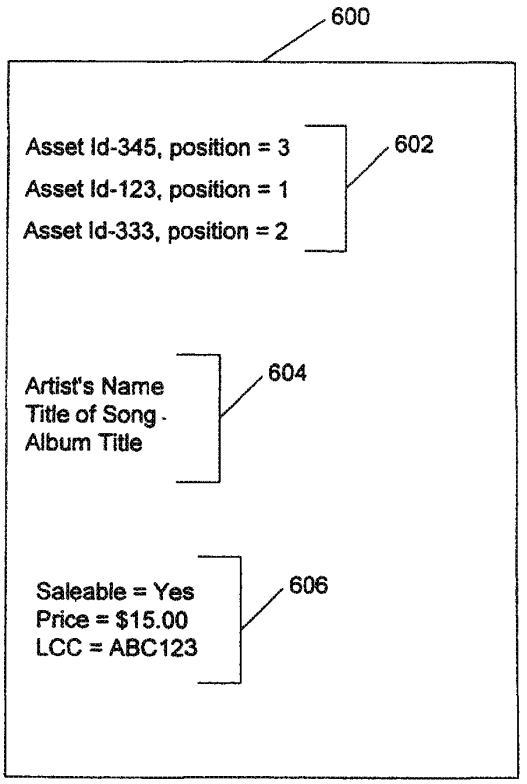

600
Asset Id-345, position = 3
Asset Id-123, position = 1
Asset Id-333, position = 2
602
Artist's Name
Title of Song
Album Title
604
Saleable = Yes
Price = $15.00
LCC = ABC123
606

FIG. 6

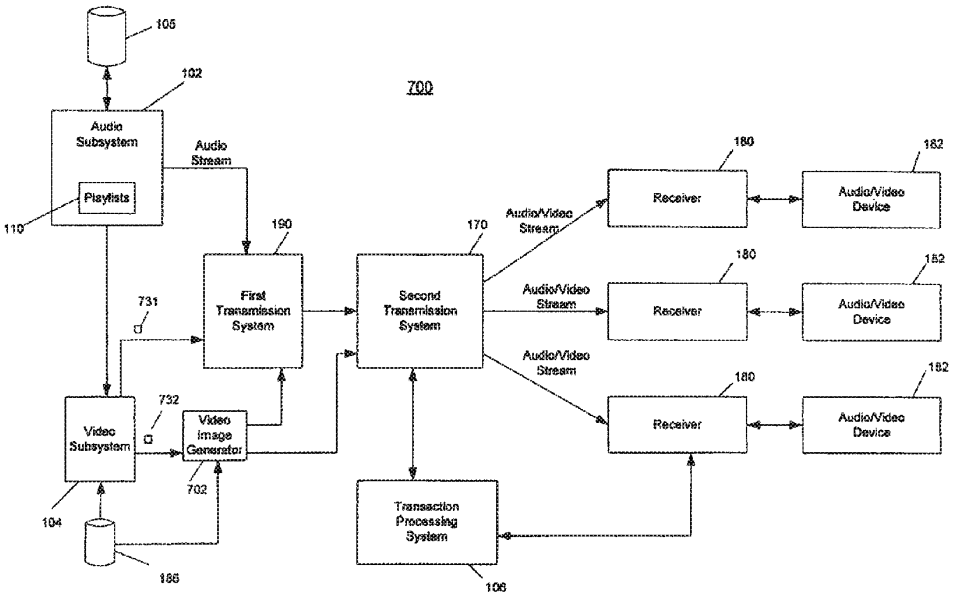

700
105
102
Audio Subsystem
Audio Stream
Playlists
110
190
First Transmission System
731
170
Second Transmission System
Audio/Video Stream
180
Receiver
182
Audio/Video Device
Audio/Video Stream
180
Receiver
182
Audio/Video Device
Audio/Video Stream
180
Receiver
182
Audio/Video Device
Video Subsystem
732
Video Image Generator
702
104
185
Transaction Processing System
106

FIG. 7

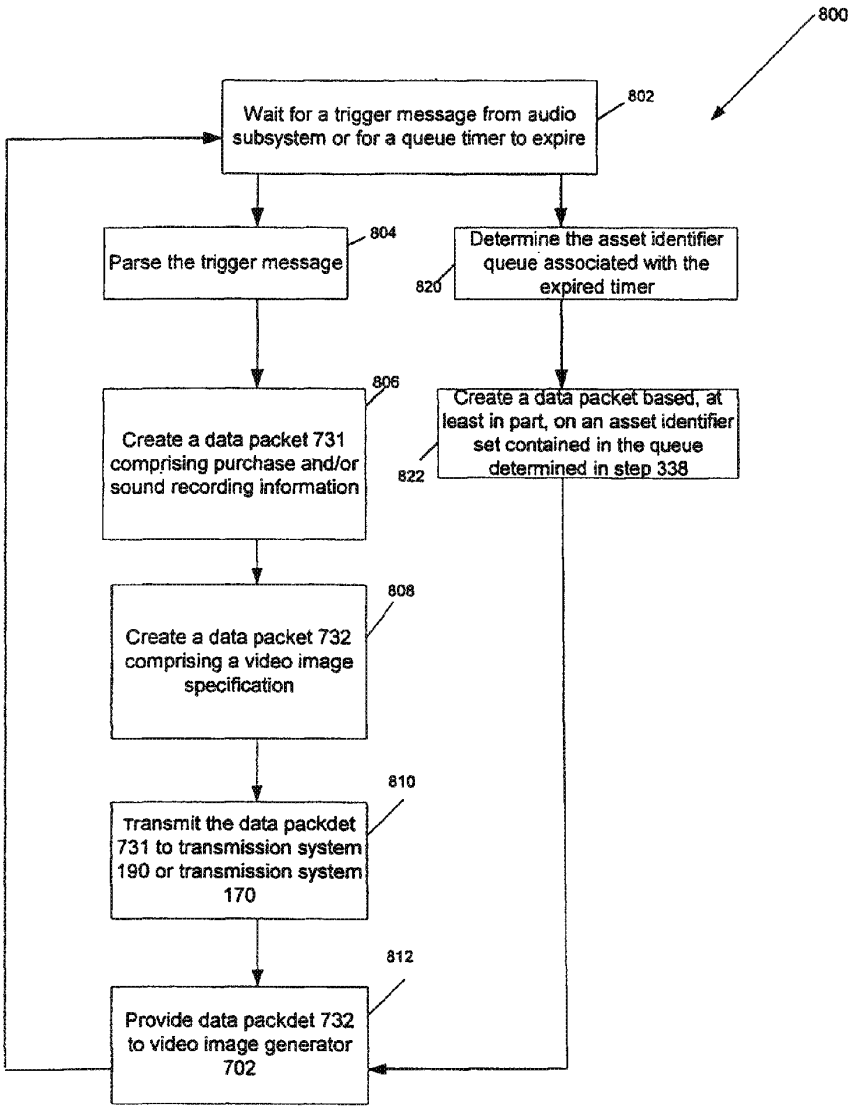

800
Wait for a trigger message from audio subsystem or for a queue timer to expire
802
Parse the trigger message
804
Determine the asset identifier queue associated with the expired timer
820
Create a data packet 731 comprising purchase and/or sound recording information
806
Create a data packet based, at least in part, on an asset identifier set contained in the queue determined in step 338
822
Create a data packet 732 comprising a video image specification
808
Transmit the data packdet 731 to transmission system 190 or transmission system 170
810
Provide data packdet 732 to video image generator 702
812

FIG. 8

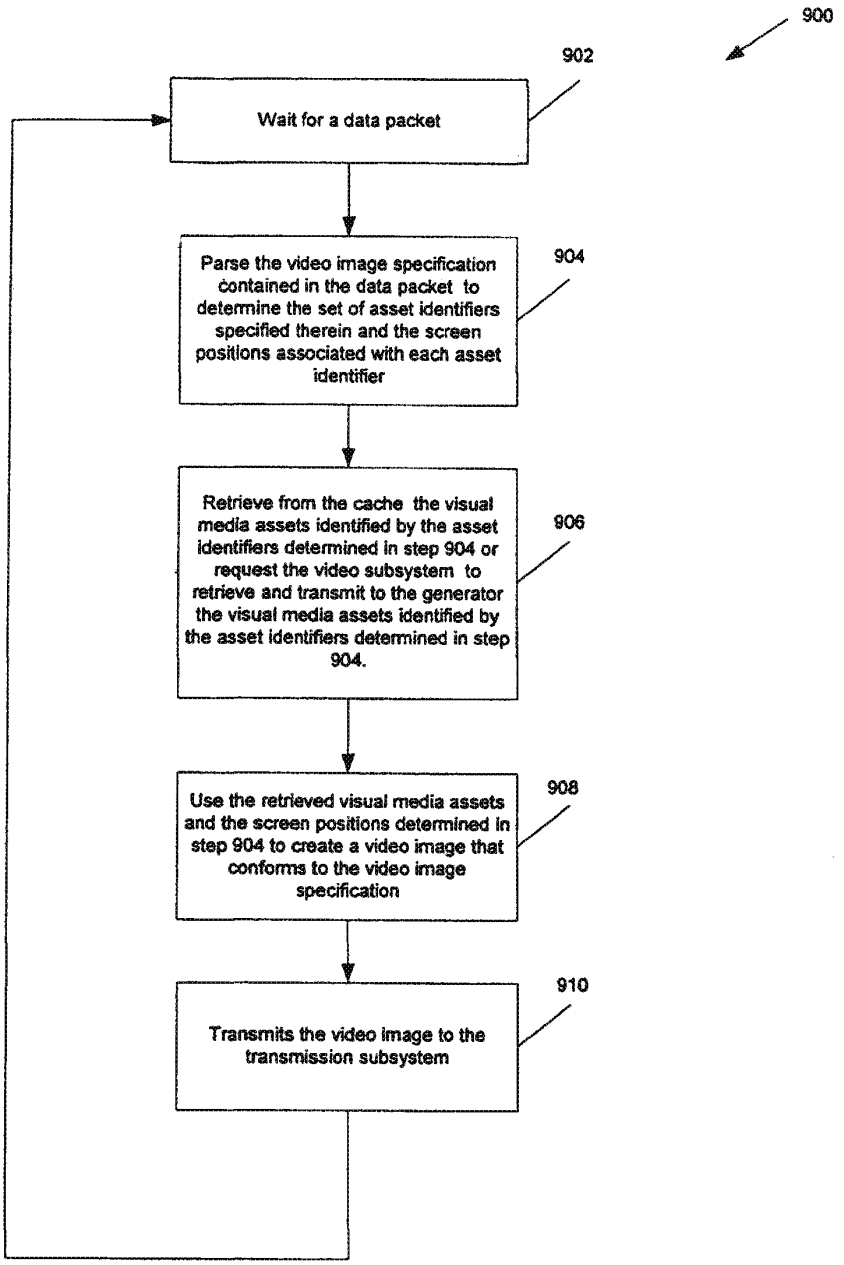


FIG. 9

MC-EGLA-000788

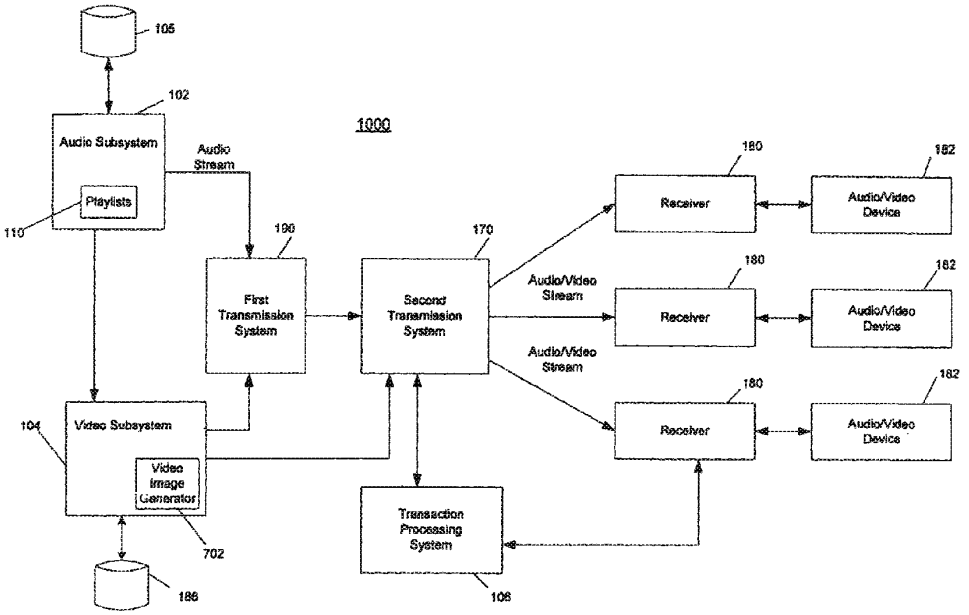

105
102
1000
Audio Subsystem
Audio Stream
Playlists
110
190
First Transmission System
170
Second Transmission System
Audio/Video Stream
Audio/Video Stream
180
Receiver
182
Audio/Video Device
180
Receiver
182
Audio/Video Device
180
Receiver
182
Audio/Video Device
104
Video Subsystem
Video Image Generator
702
186
Transaction Processing System
106

FIG. 10

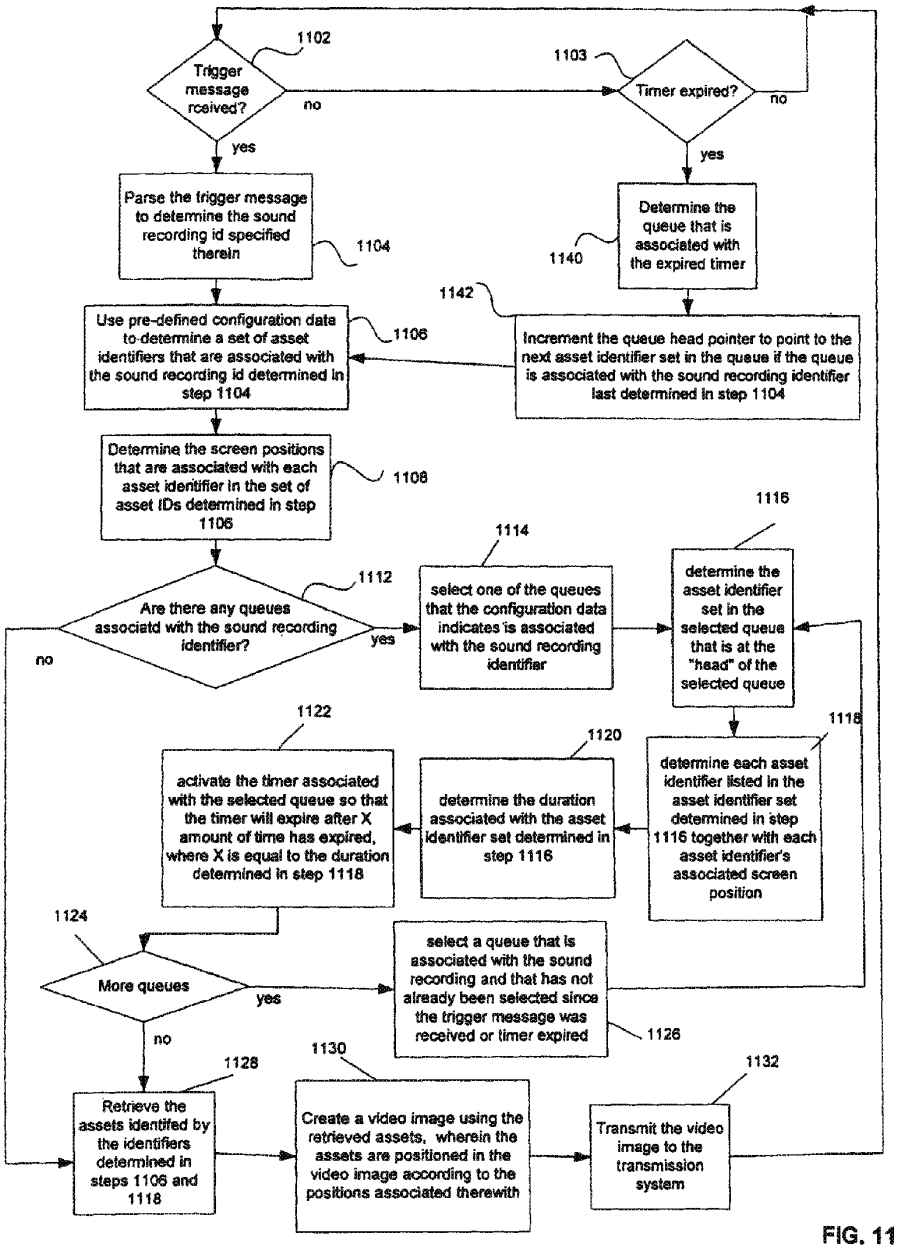


FIG. 11

MC-EGLA-000790

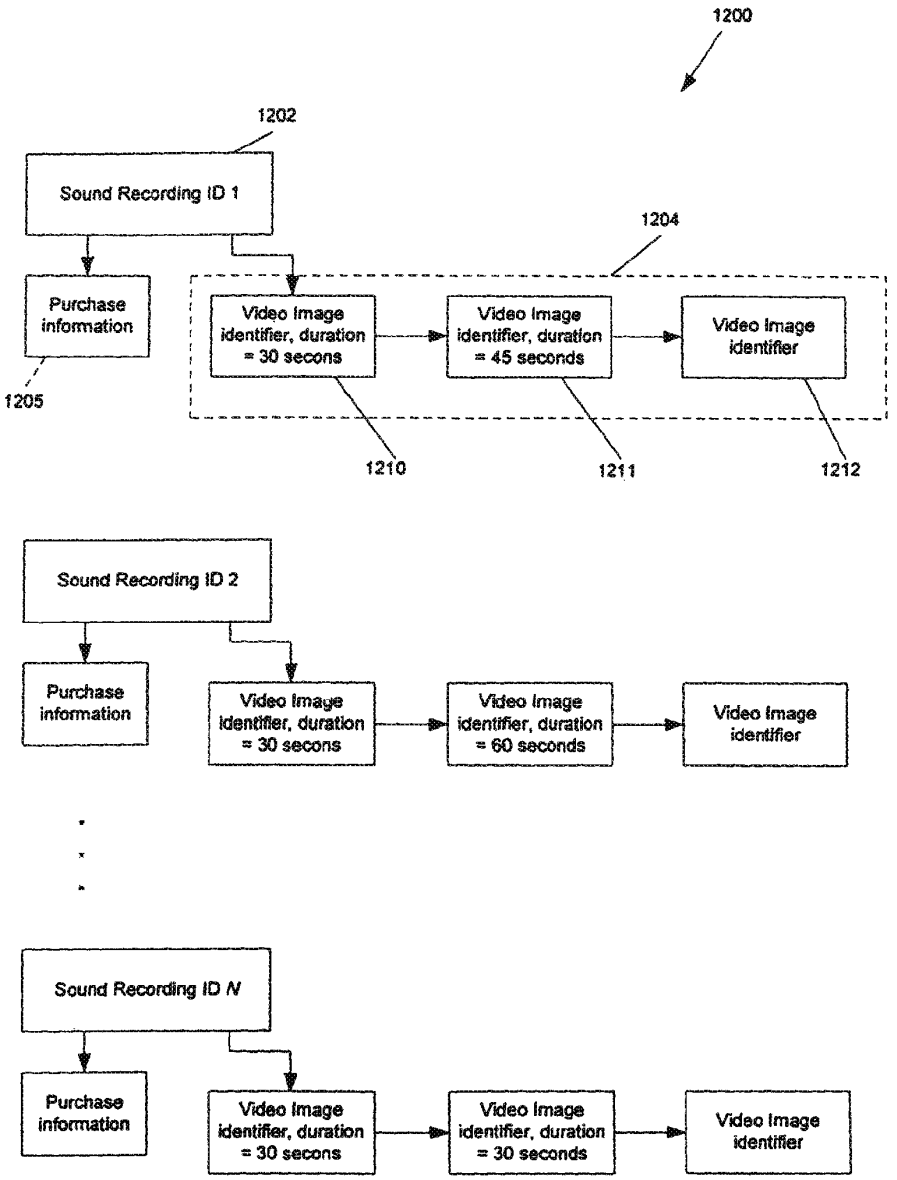

1200
1202
Sound Recording ID 1
1204
Purchase information
Video Image identifier, duration = 30 secons
Video Image identifier, duration = 45 seconds
Video Image identifier
1205
1210
1211
1212
Sound Recording ID 2
Purchase information
Video Image identifier, duration = 30 secons
Video Image identifier, duration = 60 seconds
Video Image identifier
Sound Recording ID N
Purchase information
Video Image identifier, duration = 30 secons
Video Image identifier, duration = 30 seconds
Video Image identifier

FIG. 12

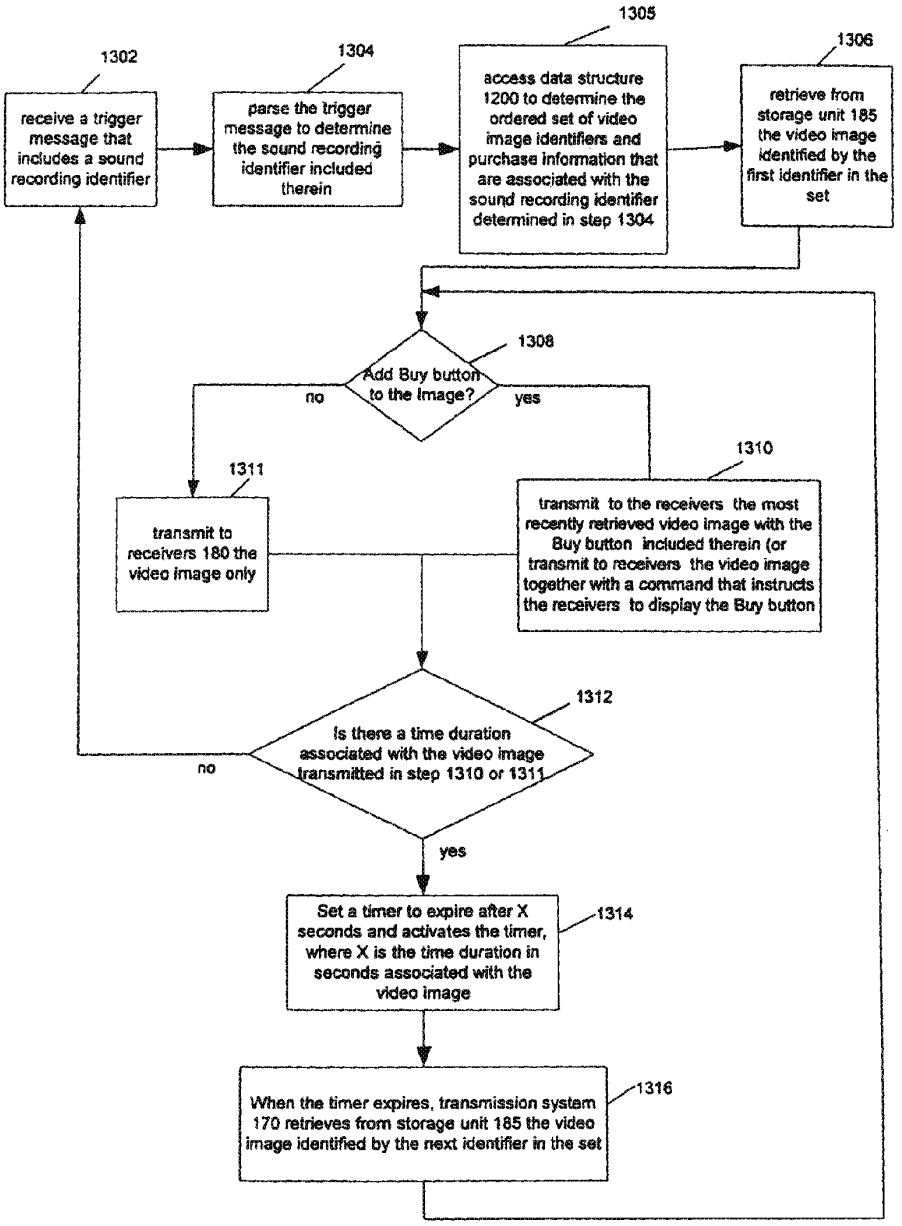


FIG. 13

MC-EGLA-000792

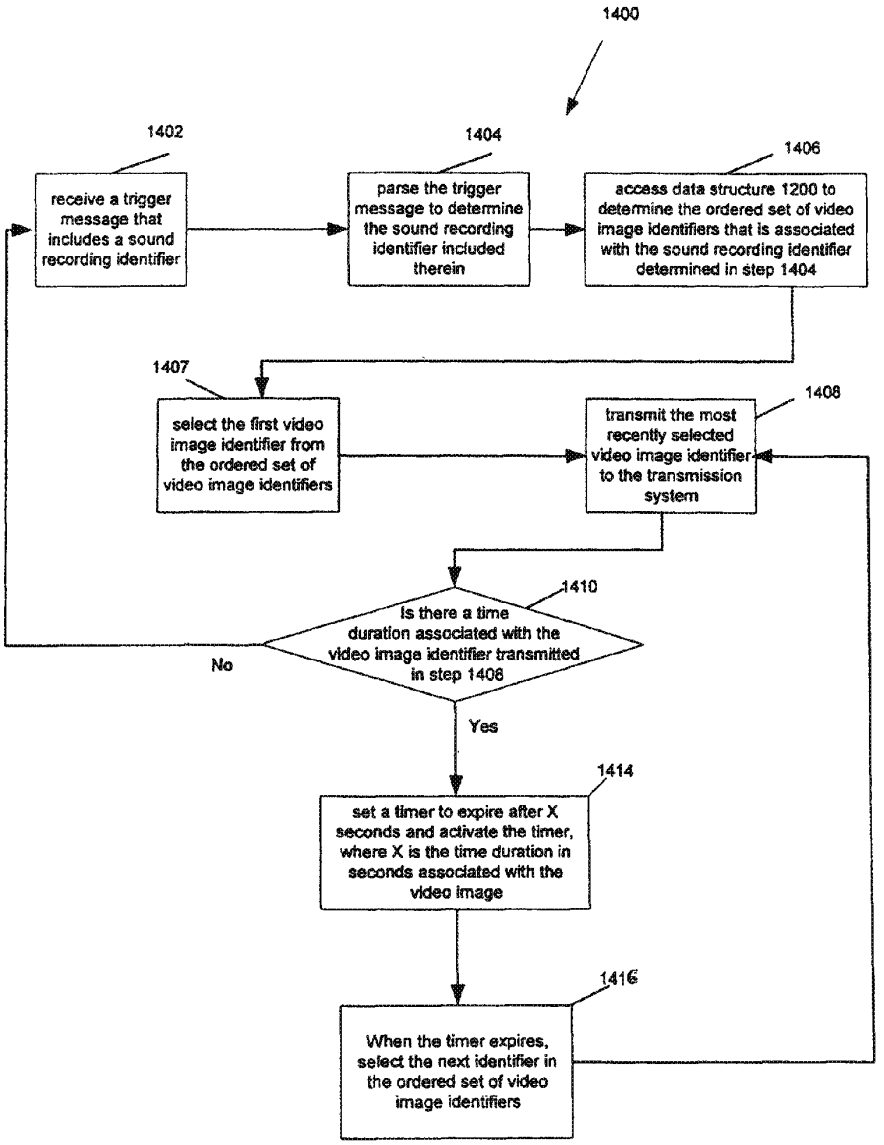

1400
1402
receive a trigger message that includes a sound recording identifier
1404
parse the trigger message to determine the sound recording identifier included therein
1406
access data structure 1200 to determine the ordered set of video image identifiers that is associated with the sound recording identifier determined in step 1404
1407
select the first video image identifier from the ordered set of video image identifiers
1408
transmit the most recently selected video image identifier to the transmission system
1410
Is there a time duration associated with the video image identifier transmitted in step 1408
No
Yes
1414
set a timer to expire after X seconds and activate the timer, where X is the time duration in seconds associated with the video image
1416
When the timer expires, select the next identifier in the ordered set of video image identifiers

FIG. 14A

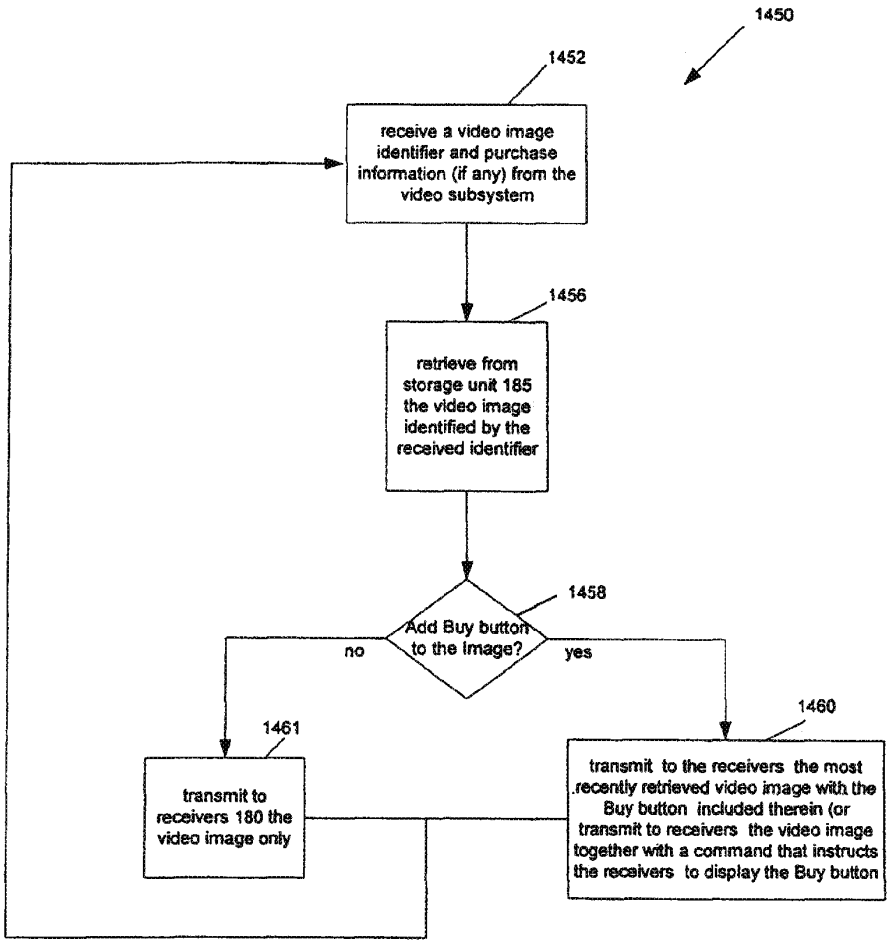

1450
1452
receive a video image identifier and purchase information (if any) from the video subsystem
1456
retrieve from storage unit 185 the video image identified by the received identifier
1458
Add Buy button to the image?
no
yes
1461
transmit to receivers 180 the video image only
1460
transmit to the receivers the most recently retrieved video image with the Buy button included therein (or transmit to receivers the video image together with a command that instructs the receivers to display the Buy button

FIG. 14B

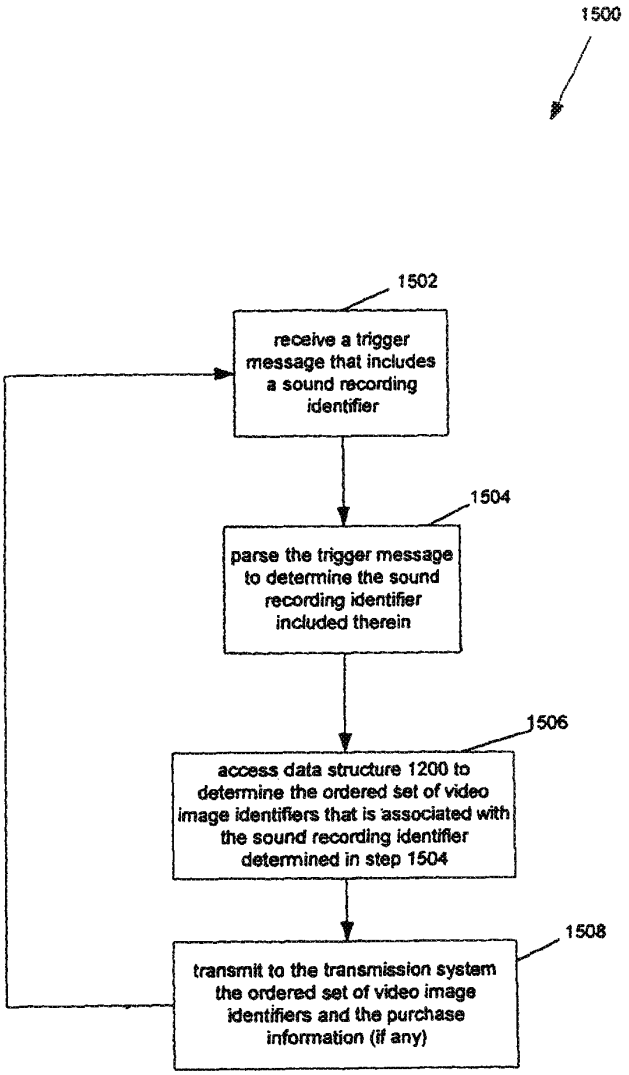

1500
1502
receive a trigger message that includes a sound recording identifier
1504
parse the trigger message to determine the sound recording identifier included therein
1506
access data structure 1200 to determine the ordered set of video image identifiers that is associated with the sound recording identifier determined in step 1504
1508
transmit to the transmission system the ordered set of video image identifiers and the purchase information (if any)

FIG. 15A

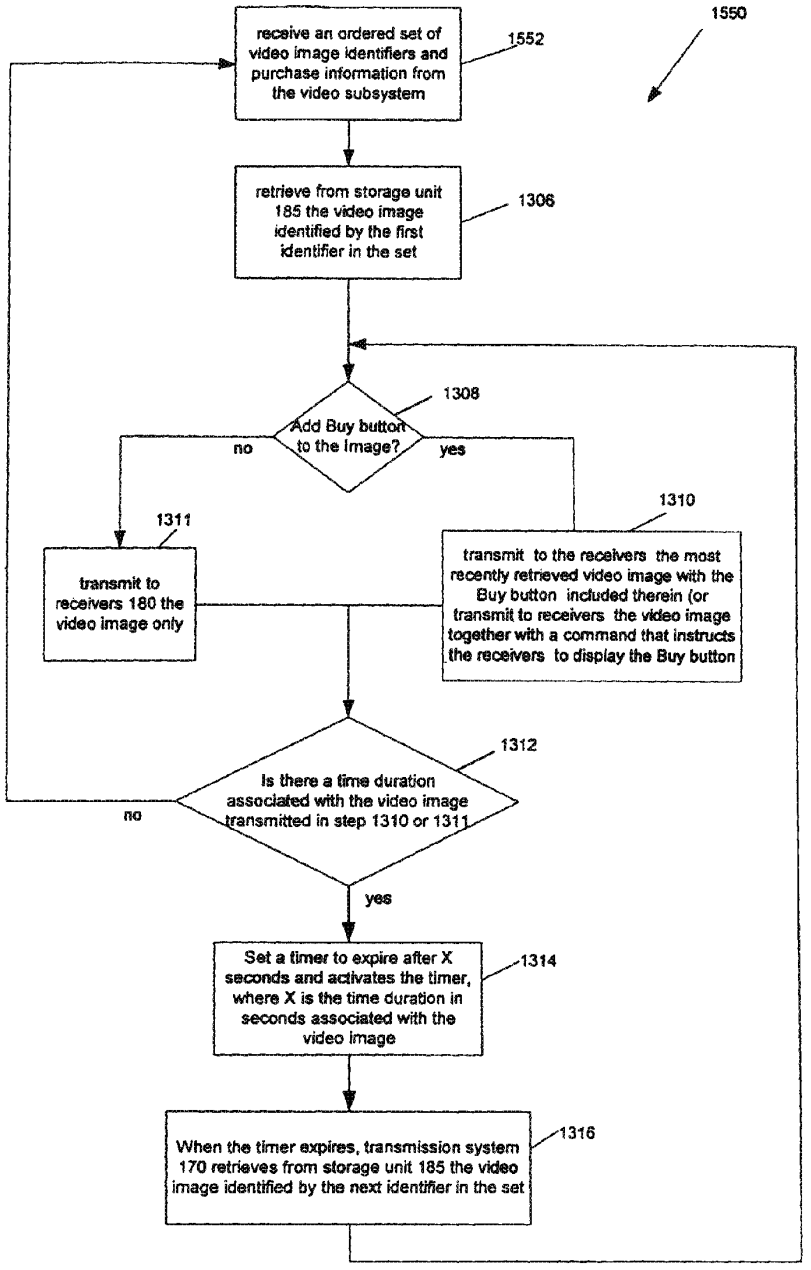


FIG. 15B

MC-EGLA-000796

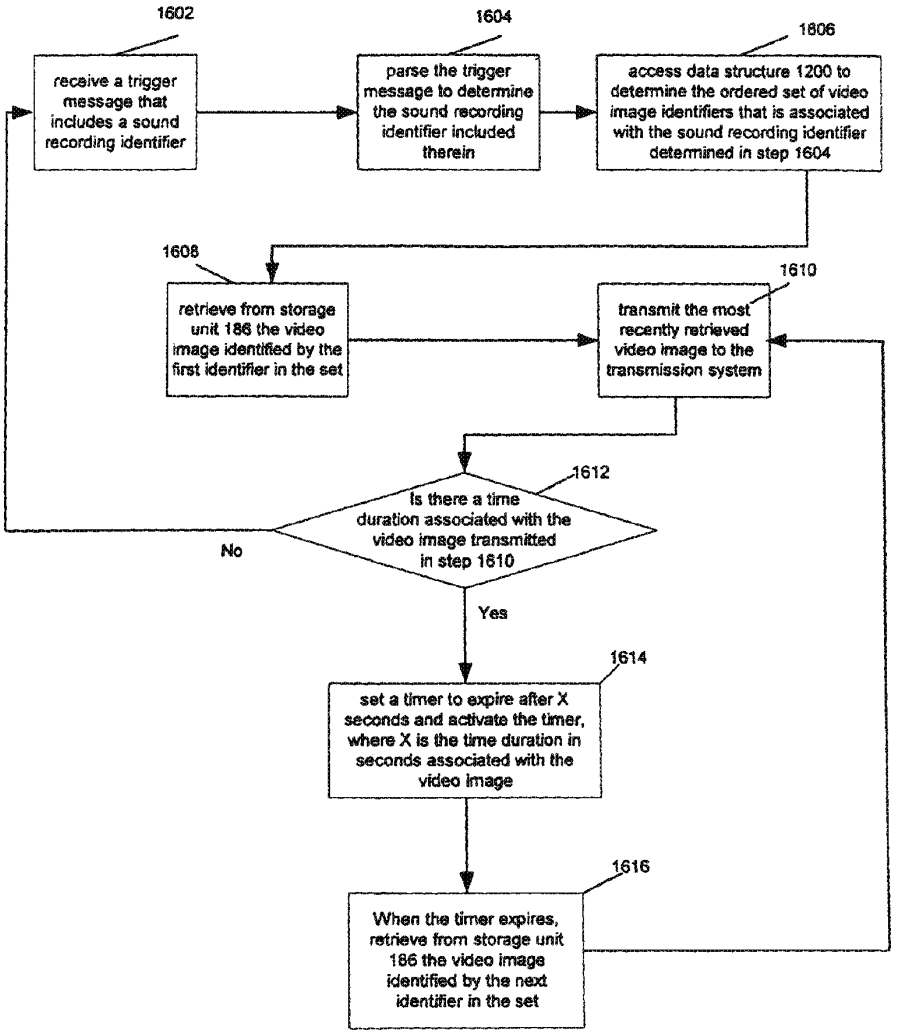


FIG. 16

MC-EGLA-000797

SYSTEM AND METHOD FOR PROVIDING AN INTERACTIVE, VISUAL COMPLEMENT TO AN AUDIO PROGRAM

CROSS-REFERENCE TO RELATED APPLICATIONS

This application is a continuation of application Ser. No. 14/314,379, filed on Jun. 25, 2014 (status pending), which is a continuation of application Ser. No. 13/082,791, filed on Apr. 8, 2011 (now U.S. Pat. No. 8,769,602), which is a continuation of application Ser. No. 11/837,772, filed on Aug. 13, 2007 (now U.S. Pat. No. 7,926,085), which is a continuation of application Ser. No. 10/066,793, filed on Feb. 6, 2002 (now U.S. Pat. No. 7,275,256), which claims the benefit of provisional application No. 60/315,046, filed on Aug. 28, 2001. The above identified applications and patents are incorporated by reference herein.

BACKGROUND OF THE INVENTION

1. Field of the Invention

The present invention is generally related to audio services, and, more specifically, provides an interactive, visual complement to one or more audio programs.

2. Discussion of the Background

Presently, there exist systems that broadcast music via satellite and cable to consumers' televisions or set-top boxes or other broadcast receiving devices. Within such a system, a consumer has typically a selection of 45 music channels to choose from. The channels comprise a variety of music genres and formats. Conventionally, for each of the available music channels, the system broadcasts audio only or, at most, a few lines of text in addition to the audio. This additional text is displayed on the consumer's TV screen. On any given channel, the text typically includes information about the music that is currently playing on that channel, such as the name of the artist, the title of the song, and the title of an album that contains the song.

Because only a few lines of text, at most, are transmitted with the audio, a consumer who tunes his or her TV or set-top box to one of the music channels sees an almost entirely blank TV screen. Thus, in conventional broadcast music systems, the TV screen is underutilized and the consumer's overall enjoyment of the system is limited.

What is desired, therefore, is a system to overcome this and other disadvantages of conventional music systems.

SUMMARY OF THE INVENTION

The present invention overcomes the above described disadvantage by providing a system and method for providing a visual complement to one or more audio programs. In one aspect, the system includes an audio subsystem for selecting a sound recording based on a playlist, generating an audio signal corresponding to the sound recording, and transmitting triggers to a video subsystem whenever a sound recording is selected. Upon receiving a trigger from the audio subsystem, the video subsystem generates a video image specification based, at least in part, on the selected sound recording. The audio signal and video image specification are transmitted to an audio/video signal transmission system. The transmission system receives the video image specification and generates a video image that conforms to the video image specification. The transmission system then transmits the video image and the audio signal to consumers' audio/video receivers so that the audio signal and video image may be perceived by the consumers. In this way, the system provides a visual complement to an audio service.

In one embodiment, the audio/video signal transmission system is a broadcast transmission system that broadcasts the video image and the audio signal to the consumers' audio/video receivers.

Advantageously, the invention may also provide an interactive, visual complement to the audio program. In this embodiment, the transmission system adds one or more selectable, interactive buttons to the video image depending on information received from the video subsystem.

In another aspect, the system also includes a video image generator coupled to the video subsystem. In this aspect, the video image specification generated by the video subsystem in response to the trigger received from the audio subsystem is provided to the video image generator. The video image generator then generates a video image based on the provided video image specification and transmits the video image to a first transmission subsystem. At the same time this is occurring, audio subsystem transmits the audio signal corresponding to the selected sound recording to the first transmission subsystem. The first transmission subsystem then transmits the audio signal together with the video image to a second transmission system, which then transmits the audio signal and video image to the consumers' receivers so that when a consumer tunes his receiver to the particular channel the consumer will be able to hear the sound recording and view the video image.

Advantageously, the video image is updated at various times so that the video image seen by the consumer changes over time as well as changing whenever a new sound recording is selected and played by the audio subsystem.

In one particular aspect, the video subsystem generates an HTML document that contains the video image specification and provides the HTML document to the video image generator. The video image generator uses the HTML document to generate an MPEG video presentation.

In another aspect, the video images are pre-generated. The pre-generated video images may be stored at the audio/video system or at the transmission system. Advantageously, a data structure is used to associate a set of one or more of the pre-generated video images with one or more sound recordings from a playlist.

Further features and advantages of the present invention, as well as the structure and operation of various embodiments of the present invention, are described in detail below with reference to the accompanying drawings.

BRIEF DESCRIPTION OF THE DRAWINGS

The accompanying drawings, which are incorporated herein and form part of the specification, illustrate various embodiments of the present invention and, together with the description, further serve to explain the principles of the invention and to enable a person skilled in the pertinent art to make and use the invention. In the drawings, like reference numbers indicate identical or functionally similar elements. Additionally, the left-most digit(s) of a reference number identifies the drawing in which the reference number first appears.

FIG. **1** is a block diagram of one embodiment of an audio/video system for providing audio/video programming to consumers.

FIG. **2** illustrates various locations on a TV screen where visual media assets may be displayed.

FIGS. **3**A-**3**C are flow charts illustrating processes, according to one embodiment, performed by the audio subsystem, the video subsystem, and the audio/video signal transmission system, respectively, for providing an interactive, visual complement to an audio program for a particular channel.

FIG. **4** illustrates pre-defined configuration data that is associated with a particular channel and that is used by the video subsystem to create data packets for the particular channel.

FIGS. **5**A and **5**B is a flow chart illustrating a process, according to one embodiment, for creating a data packet for a particular channel.

FIG. **6** illustrates an exemplary data packet.

FIG. **7** is a block diagram of a system according to another embodiment of the invention.

FIG. **8** is a flow chart illustrating a process, according to another embodiment, that is performed by the video subsystem.

FIG. **9** is a flow chart illustrating a process, according to one embodiment, that is performed by the video image generator.

FIG. **10** is a block diagram of a system according to another embodiment of the invention.

FIG. **11** is a flow chart illustrating a process, according to one embodiment, that is performed by the video subsystem.

FIG. **12** illustrates an exemplary data structure that associates sound recording identifiers from a playlist with a set of one or more video image identifiers.

FIG. **13** is a flow chart illustrating a process, according to one embodiment, that is performed by the audio/video signal transmission system **170** when the video images are pre-generated.

FIG. **14**A is a flow chart illustrating a process, according to one embodiment, that is performed by the video subsystem when the video images are pre-generated.

FIG. **14**B is a flow chart illustrating a process, according to another embodiment, that is performed by the audio/video signal transmission system when the video images are pre-generated.

FIG. **15**A is a flow chart illustrating a process, according to another embodiment, that is performed by the video subsystem when the video images are pre-generated.

FIG. **15**B is a flow chart illustrating a process, according to another embodiment, that is performed by the audio/video signal transmission system when the video images are pre-generated.

FIG. **16** is a flow chart illustrating a process, according to another embodiment, that is performed by the video subsystem when the video images are pre-generated.

DETAILED DESCRIPTION OF THE PREFERRED EMBODIMENTS

FIG. **1** is a block diagram of one embodiment of a system **100** for providing audio/video programming. System **100** includes an audio/video system **101** comprising an audio subsystem **102** that provides audio content for transmission to listeners over one or more channels and a video subsystem **104** for providing video content that is transmitted together with the audio content and that complements the audio content. System **100** further includes a transaction processing subsystem **106** for processing transactions, such as electronic commerce ("e-commerce") transactions.

Audio/video system **101** may comprise a data processing system, a persistent storage device, and volatile memory. Stored in the storage device and/or the volatile memory are computer instructions (i.e., software) that enable audio/video system **101** to perform the functions and processes described herein. Audio subsystem **102** and video subsystem **104** may be implemented in software or a combination of software and hardware.

Audio subsystem **102** has access to a sound recording library **105** that includes a large number of sound recordings (e.g., tracks from albums of many different genres). The sound recordings may be stored on compact discs, hard disks, or other media for storing data.

Audio subsystem **102** preferably includes a playlist **110** for each of the one or more channels supported by system **100**. A playlist **110** for a particular channel specifies sound recordings that have been programmed for transmission to the listeners of system **100** over that channel during a given period of time. A new playlist **110** is typically generated for each channel on some periodic basis (e.g., daily, weekly, etc.).

Audio subsystem **102** typically retrieves, encodes, and streams the sound recordings to consumers in the order in which the sound recordings are listed in the playlists **110**. Preferably, the sound recordings are encoded by audio subsystem **102** according to the Dolby AC-3 coding technique.

Audio subsystem **102** may stream the encoded sound recordings to a transmission subsystem **190**, which may transmit the encoded sound recordings to an audio/video signal transmission system **170**. Transmission system **170** may be a broadcast transmission system, such as a cable head-end or a direct broadcast satellite system. Transmission system **170** comprises a transmitter (not shown) for transmitting signals and a computer (not shown) programmed to perform processes described herein.

Transmission system **170** transmits the encoded sound recordings to audio/video receivers **180**, which are coupled to an audio/video device **182** that reproduces the sound recordings for the subscribers. Receivers **180** may be conventional digital cable or satellite set-top boxes. Audio/video device **182** may comprise a TV screen or monitor and speakers.

Video subsystem **104**, in one embodiment, is responsible for, among other things, generating, in real time, data packets for each of the one or more channels. A data packet for a particular channel comprises a video image specification that specifies a visual complement of the audio service for the particular channel. Thus, the video image specification defines how the listeners' TV screens will look when the listener tunes to the particular channel.

More specifically, the video image specification specifies one or more visual media asset identifiers, each of which identify one or more visual media assets. The video image specification may also specify the screen position where each identified asset is to be displayed. Examples of video media assets include: graphic image files (e.g., GIF files, JPEG files, bitmap files, etc.), video files (e.g., MPEG files, AVI files), text messages, etc. It is these assets that are used to create the visual complement to the audio service.

The video image specification for a particular channel is based, at least in part, on the sound recording that the particular channel is currently playing. Therefore, for example, if a U2 song from the Joshua Tree album is currently being played on channel **51**, then, at some particular point in time while the song is playing, the video image specification for channel **51** might specify that an image of the Joshua Tree album art is to be displayed at a first location **202** (see FIG. **2**) on a TV screen (or monitor) **282**.

Additionally, the video image specification may also specify that the name of the song, artist, and album is to be displayed at a second location **204** on the TV screen **282**, and an advertising banner is to be displayed at a third location **206** on the TV screen **282**.

In one embodiment, the video image specification may also specify that certain music trivia and/or news is to be displayed at a fourth location **208** on the TV screen **282**. It should be understood that album art, advertising banners, text messages, and other visual media assets may be positioned anywhere on the TV screen **282** and that the invention is not limited to the particular arrangement of visual media assets shown in FIG. **2**.

The video image specification may also be time driven. That is, at least some of the assets (e.g., advertising banners, music trivia, and news) specified by the video image specification are determined as function of time, regardless of which sound recording is currently playing.

Preferably, each video image specification for a particular channel includes an asset identifier that identifies a text message that contains information pertaining to the sound recording that is currently being played over the particular channel. This information may include the name of the artist who created the sound recording, the title of the sound recording, and the name of an album on which the sound recording can be found. Alternatively, instead of or in addition to each video image specification for the particular channel including the asset identifier that identifies the text message, the text message itself may be included in the data packet.

In addition to including a video image specification, the data packet may further include purchase information for enabling a listener of system **100** to purchase the album or the sound recording. The purchase information may include an indicator that the sound recording or album is saleable, a price, and a unique code that identifies the album.

FIG. **6** illustrates an exemplary data packet **600**. As shown in FIG. **6**, data packet **600** includes a video image specification **602**. Optionally, data packet **600** may also include sound recording information **604**, and purchase information **606**. Video image specification **602** comprises a list of visual media asset identifiers and associates a screen position with each asset identifier. The data packets may be extensible mark-up language (XML) files or hyper-text mark-up language (HTML) files.

In the embodiment shown in FIG. **1**, after generating a data packet for a particular channel, video subsystem **104** transmits the data packet so that it will be received by transmission system **170**. Video subsystem **104** may use transmission subsystem **190** to transmit the data packet to transmission system **170** or may use a public network (e.g., the Internet) or private network to transmit the data packet to transmission system **170**.

Transmission system **170** may have access to a data storage unit **185**. Preferably, storage unit **185** has a very short access time. Storage unit **185** stores the visual media assets specified in the data packet (storage unit **185** is updated periodically by an administrator to ensure that storage unit **185** contains the necessary visual media assets). Therefore, borrowing from the above example, storage unit **185** stores the image of the Joshua Tree album art that is displayed when the song from U2's Joshua Tree album is playing.

In embodiments where transmission system **170** does not have access to storage unit **185**, a storage unit **186** that is coupled to video subsystem **104** stores the visual media assets specified in the video image specification, and video subsystem **104** retrieves the assets from storage **186** and transmits them to transmission system **170**.

After receiving the data packet for the particular channel, transmission system **170** parses the data packet and determines the video image specification and purchase information that are specified therein. Transmission system **170** then creates a video image corresponding to the video image specification and transmits the video image over the particular channel to subscribers' audio/video receivers **180**. The video image is then displayed by audio/video device **182**.

The video image conforms to the video image specification contained in the data packet so that when the video image is displayed on the subscribers' audio/video device **182**, the visual media assets defined in the video image specification are displayed in the locations as specified in the video image specification.

The video image may be encoded according to a Moving Pictures Experts Group (MPEG) standard, the National Television Standards Committee (NTSC) video signal standard, or other video signal standard. In one specific embodiment, the video image is encoded according to an MPEG standard and comprises an MPEG I-frame followed by null P-frames.

FIGS. **3**A-**3**C are flow charts illustrating processes **300**, **330**, and **360**, according to one embodiment, performed by audio subsystem **102**, video subsystem **104**, and transmission system **170** respectively, for providing an interactive, visual complement to the audio service for a particular channel. The same process is performed for the other channels.

Process **300** (see FIG. **3**A) begins in step **302**, where audio subsystem **102** selects a sound recording from library **105** based on a playlist for the particular channel. After selecting the sound recording, audio subsystem **102** retrieves it from library **105**, encodes it, and transmits it to transmission subsystem **190** (step **304**), which then transmits it to a system, such as, for example, a transmission system **170**, that transmit audio/video signals to the subscribers' receivers **180**.

At or about the same time as step **304** is performed, audio subsystem **102** transmits to video subsystem **104** a trigger message specifying a sound recording identifier that identifies the sound recording selected in step **302**, sound recording information pertaining to the sound recording, and a channel identifier (step **306**). The sound recording identifier uniquely identifies the sound recording selected in step **302** and the channel identifier uniquely identifies the particular channel. After audio subsystem **102** finishes transmitting the sound recording selected in step **302**, control passes back to step **302**, where audio subsystem **102** selects another sound recording from library **105** based on the playlist for the particular channel after it has finished streaming the previously selected sound recording for that channel.

Process **330** (see FIG. **3**B) begins in step **332**, where video subsystem **104** waits for a trigger message from audio subsystem **102** or for a timer to expire. If video subsystem **104** receives a trigger message from audio subsystem **102**, control passes to step **334**, and if a timer expires, control passes to step **338**.

In step **334**, video subsystem **104** parses the trigger message to determine the sound recording identifier, sound recording information, and channel identifier specified therein. Next (step **336**), video subsystem **104** uses this information, together with pre-defined configuration data that is associated with the channel identified by the channel identifier, to create a data packet for the identified channel. The predefined configuration data is stored in video subsystem **104**. An illustration of pre-defined configuration data is shown in FIG. **4**, and will be discussed in more detail further below.

In step **338**, video subsystem **104** determines a channel and an asset identifier queue that is associated with the expired timer (see element **420** of FIG. **4** for an illustration of an exemplary queue). Next (step **340**), video subsystem **104** may create a data packet for the identified channel based, at least in part, on the contents of the asset identifier queue associated with the expired timer. An illustration of a process **500** for

creating a data packet is shown in FIG. **5**, and will be discussed in more detail further below.

After creating the data packet in either step **336** or **340**, video subsystem **104** transmits the data packet to audio/video transmission system **170** (step **342**). After step **342**, control passes back to step **344**. In step **344**, video subsystem retrieves from a storage unit **186** the visual media assets specified in the data packet and transmits the assets to transmission system **170** if storage unit **185** does not contain the assets.

Process **360** (see FIG. **3**C) begins in step **362**. In step **362**, audio/video signal transmission system **170** receives from transmission subsystem **190** the audio stream transmitted by audio subsystem **102**. Next (step **364**), transmission system **170** transmits the audio stream to receivers **180**.

While transmission system **170** is receiving and transmitting the audio stream, transmission system **170** receives from video subsystem **104** a data packet for the particular channel (step **366**). After receiving the data packet for the particular channel, transmission system **170** parses the data packet and determines the video image specification and purchase information (if any) specified therein (step **368**). That is, transmission system **170** determines the set of asset identifiers specified by the video image specification and the screen position associated with each asset identifier, which may also be specified by the video image specification.

Next (step **370**), transmission system **170** retrieves from storage unit **185** the assets identified by the asset identifiers determined in step **368**, but if storage unit **185** does not have the assets, then transmission system **170** receives them from video subsystem **104**, as described above.

Next (step **372**), transmission system **170** determines whether the purchase information indicates that a "Buy" button **250** and/or "Buy-Previous" button **251** should be included in of the video image transmitted to receivers **180**. Buy button **250** and Buy-Previous button **251** are interactive, selectable buttons that a user of system **100** may select if the user desires to make a purchase.

If it is determined that Buy button **250** and/or Buy-Previous button **251** should be included in the video image transmitted to receivers **180**, then control passes to step **374**, otherwise control passes to step **376**.

In step **374**, transmission system **170** uses the assets retrieved in step **370** and screen position information determined in step **368** to create a video image that conforms to the video image specification contained in the data packet. In step **376**, transmission system **170** performs the same step as in step **374**, but also adds Buy button **250** and/or Buy-Previous button **251** to the video image. After step **374** and step **376**, control passes to step **378**. In step **378**, the video image created in step **374** or **376** is transmitted to receivers **180**. After step **378**, control passes back to step **366**.

Alternatively, transmission system **170** does not perform step **376**. Rather, if it is determined that Buy button **250** and/or Buy-Previous button **251** should be included in the video image created in step **372**, then transmission system **170** sends one or more commands to receivers **180** that direct the receivers **180** to overlay Buy button **250** and or Buy-Previous button **251** onto the vide image transmitted in step **378**, provided that receivers **180** are capable of overlying selectable buttons.

A listener who desires to purchase a saleable item may select the Buy **250** or Buy-Previous **251** button to initiate a conventional e-commerce transaction with transaction processing system **106**. The listener may select the Buy or Buy-Previous button by, for example, selecting a pre-defined button on a remote control (not shown) that communicates with a receiver **180**.

In response to the listener selecting a button **250** or **251**, a user interface screen is presented on audio/video device **182**. The screen provides information regarding the product (i.e., the album or song currently playing), such as purchase price. If the listener decides to purchase the product, the listener may, for example, select another pre-defined button on the remote control. This will cause a message to be sent from the listener's receiver **180** to transaction processing system **106**. The message indicates that the listener desires to purchase the product and may contain an identifier that identifies the product and an identifier that identifies the listener or a registered user account. The receiver may directly send the message to the system **106** through a network, such as the Internet, or may send the message to transmission system **170**, which then relays the message to system **106**. Upon receiving the message, transaction processing system **106** process the purchase transaction and/or communicates with a vendor who provides the product.

Referring now to FIG. **4**, FIG. **4** illustrates pre-defined configuration data **400** that is associated with a particular channel and that is used by video subsystem **104** to create data packets for the particular channel. As shown in FIG. **4**, the pre-defined configuration data **400** associates visual media asset identifiers with sound recording identifiers. Each asset identifier uniquely identifies a visual media asset. Thus, configuration data **400** associates visual media assets with a sound recordings.

Preferably, the visual media assets associated with a sound recording are to be displayed during the entire time the sound recording is being played. For example, as shown in FIG. **4**, sound recording identifier **402** is associated with asset identifiers **404** and **406**. Thus, when system **100** plays the sound recording identified by sound recording identifier **402**, the assets identified by asset identifiers **404** and **406** should be displayed to the listeners. Preferably, the configuration data associates a position with each visual media asset. For example, assets **404** and **406** are associated with positions **5** and **3** respectively.

The configuration data may also specify one or more asset queues. An asset queue is an ordered list of asset identifier sets. An asset identifier set contains one or more asset identifiers and a screen position for each asset identifier. Preferably, a time duration is associated with each asset identifier set in a queue. For example, the exemplary configuration data **400** illustrated in FIG. **4**, specifies two asset queues: queue **420** and **430**. Queue **420**, for example, contains asset sets **421-423**, and assets **421-423** are associated with a time duration of 30 seconds, 60 seconds, and 45 seconds, respectively. As an example, asset identifier set **421** contains asset identifiers **491** and **492**, where asset identifier **491** is associated with screen position 1 and asset identifier **492** is associated with screen position 2.

In addition to associating a sound recording identifier with certain asset identifiers, the configuration data may also associate a sound recording identifier with one or more of the asset identifier queues. For example, as shown in FIG. **4**, sound recording **402** is associated with asset identifier queue **420** and **430**. Because asset sets **421-423** are listed in queue **420** and because queue **420** is associated with sound recording **402**, assets identified by asset identifier sets **421-423** are displayed sequentially for the specified duration of times while sound recording **402** is being played. That is, while sound recording **402** is being played, the assets identified by asset identifier set **421** are displayed for its specified duration

(i.e., 30 seconds), followed by the assets identified by asset identifier set **422** for its specified duration (i.e., 60 seconds), and then followed by the assets identified by asset identifier set **423** for its specified duration (i.e., 45 seconds).

Referring now to FIGS. **5**A and **5**B, FIGS. **5**A and **5**B is a flow chart illustrating a process **500**, according to one embodiment, for creating a data packet for a particular channel. Process **500** begins in step **501** wherein video subsystem **104** initializes a data packet so that it does not contain any data. Next (step **502**), video subsystem **104** determines whether a trigger message from audio subsystem has been received. If a trigger message is received, control passes to step **504**, otherwise control passes to step **503**. In step **503**, video subsystem **104** determines whether an asset queue timer has expired. If an asset queue timer expires, control passes to step **540**, otherwise control passes back to step **502**.

In step **504**, video subsystem **104** parses the trigger message to determine the sound recording identifier, sound recording information, and channel identifier specified therein. Next (step **506**), video subsystem **104**, uses the pre-defined configuration data to determine a set of assets identifiers that are associated with the sound recording identifier last determined in step **504**. Video subsystem **104** then determines the screen position that is associated with each asset identifier in the set (step **508**). The asset identifiers determined in step **506** and their associated screen positions determined in step **509** are included in the data packet (step **510**).

Next (step **512**), video subsystem **104** uses the pre-defined configuration data to determine whether there are any asset identifier queues associated with the sound recording identifier determined in step **504**. If there are, control passes to step **514**, otherwise control passes to step **528**.

In step **514**, video subsystem **104** selects one of the queues that the configuration data indicates is associated with the sound recording identifier. Next (step **516**), video subsystem determines the asset identifier set in the selected queue that is at the "head" of the selected queue. In one embodiment, video subsystem **104** maintains a head pointer for each queue specified by the configuration data. The head pointer for a queue points to the asset identifier set in the queue that is at the head of the queue. Thus, video subsystem **104** may use the head pointer to determine the asset identifier set in the selected queue that is at the head of the selected queue. After step **516**, control passes to step **518**.

In step **518**, video subsystem **104** includes in the data packet each asset identifier listed in the asset identifier set determined in step **516** together with each asset identifier's associated screen position. Next (step **520**), video subsystem **104** determines the duration associated with the asset identifier set determined in step **516**. Next (step **522**), video subsystem **104** activates the timer associated with the selected queue so that the timer will expire after X amount of time has expired, where X is equal to the duration determined in step **518**. After step **522**, control passes to step **524**.

In step **524**, video subsystem **104** determines whether there are additional asset identifier queues associated with the sound recording identifier. If there are, control passes to step **526**, otherwise control passes to step **528**. In step **526**, video subsystem **104** selects a queue that is associated with the sound recording and that has not already been selected since the trigger message was received. After step **526**, control passes back to step **516**.

In step **528**, video subsystem **104** includes in the data packet the sound recording information and purchase information included in the trigger message received in step **502**. This information concerns the sound recording identified by the sound recording identifier determined in step **504**. In one embodiment, the trigger message does not include this information, rather, this information is included in the pre-defined configuration data. More specifically, the pre-defined configuration data associates sound recording information and purchase information with each sound recording identifier included in the configuration data, as shown in FIG. **4**. After step **528**, control passes to step **530**, where the data packet is transmitted to transmission system **170**. After step **530**, control passes back to step **502**.

In step **540**, video subsystem **104** determines the queue that is associated with the timer that expired. Next (step **542**), video subsystem **104** increments the head pointer associated with the queue determined in step **540** to point to the next asset identifier set in the queue if the queue determined in step **540** is associated with the sound recording identifier determined in step **504**. However, if the head pointer is pointing to the last asset identifier set in the queue, video subsystem resets the pointer to point to the asset identifier set that is at the top of the queue. In this way, the queues are circular queues. After step **542**, control passes to step **506**.

FIG. **7** is a block diagram of a system **700** for providing audio/video programming according to another embodiment of the present invention. System **700** is identical to system **100** with the exception that system **700** further includes a video image generator **702** that is coupled to video subsystem **104**. Video image generator **702** has access to storage **186**, which stores the visual media assets necessary to create the visual complement to the audio service.

Additionally, instead of transmission system **170** receiving data packet **131** generated by video subsystem **104**, as described above with respect to FIG. **1**, video image generator **702** receives a data packet **732** generated by video subsystem **104**. Data packet **732** comprises a video image specification. Further, video subsystem **104** may also generate a data packet **731** and transmits data packet **731** to transmission subsystem **190**. Data packet **731** comprises purchase information and/or sound recording information corresponding to the sound recording most recently selected by audio subsystem **102**.

Video image generator **702** functions to create a video image based on the video image specification contained in data packet **732**. In one embodiment, after creating the video image, generator **702** transmits the video image to transmission subsystem **190**. Transmission subsystem **190** functions to transmits the video image, data packet **731** (if any), and the audio stream generated by audio subsystem **102** to transmission system **170**. In one embodiment, the video image, data packet **731** and audio stream are transmitted together in an MPEG-2 data stream.

In the embodiment shown in FIG. **7**, audio subsystem **102** performs process **300**, as described above. However, video subsystem **104** does not perform process **330** and transmission system **170** does not perform process **360**. Rather, video subsystem **104** performs process **800**, which is shown in FIG. **8**. Additionally, video image generator performs a process **900**, which is shown in FIG. **9**.

Process **800** begins in step **802**, where video subsystem **104** waits for a trigger message from audio subsystem **102** or for a timer to expire. If video subsystem **104** receives a trigger message from audio subsystem **102**, control passes to step **804**, and if a timer expires, control passes to step **820**.

In step **804**, video subsystem **104** parses the trigger message to determine the sound recording identifier, sound recording information, and channel identifier specified therein. Next (step **806**), video subsystem **104** uses this information, together with the pre-defined configuration data that is associated with the channel identified by the channel identifier, to create a data packet **731** for the identified channel.

Data packet **731** created in step **806** comprises purchase information and/or sound recording information. The purchase and/or sound recording information may be included in the trigger message and/or included in the pre-defined configuration data. After step **806**, control passes to step **808**. In step **808**, video subsystem **104** uses the sound recording identifier determined in step **804** and the pre-defined configuration data to create a data packet **732**. Data packet **732** comprises a video image specification (e.g., a list of visual media asset identifiers together with their associated positions). After generating data packets **731** and **732**, video subsystem **104** performs steps **810** and **812**. In step **810**, video subsystem **104** transmits data packet **731** to transmission system **190** (or to transmission system **170**). In step **812**, video subsystem **104** provides data packet **732** to video image generator **702**.

In step **820**, video subsystem **104** determines a channel and an asset identifier queue that is associated with the expired timer. Next (step **822**), video subsystem **104** creates for the identified channel a data packet **732** that comprises a video image specification. Next (step **812**) data packet **732** is provided to video image generator **702**. After step **812**, control passes back to step **802**.

Referring now to process **900**, process **900** begins in step **902**, where video image generator **702** waits to receive from video subsystem **104** a data packet **732**, which comprises a vide image specification. When a data packet **732** is received, control passes to step **904**, where video image generator **702** parses the video image specification contained in the data packet **732** to determine the set of asset identifiers specified therein and the screen positions associated with each asset identifier. After step **904**, control passes to step **906**.

In step **906**, video image generator **702** retrieves from storage **186** the visual media assets identified by the asset identifiers determined in step **904**. Alternatively, in one embodiment, video image generator **702** does not have access to storage **186**, but video subsystem **104** does. In this embodiment, generator **702** requests video subsystem **104** to retrieve and transmit to generator **702** the visual media assets identified by the asset identifiers determined in step **904**.

Next (step **908**), video image generator **702** uses the retrieved visual media assets and the screen positions determined in step **904** to create a video image that conforms to the video image specification. Video image generator **702** then transmits the video image to transmission subsystem **190** (step **910**). After step **910**, control passes back to step **902**.

In one embodiment, data packet **732** is an HTML document and video image generator **702** is a hardware/software device that convert the HTML document to an MPEG video presentation. In one specific embodiment, video image generator converts the HTML document into an MPEG I-frame followed by null P-frames. Such a device can be purchased from Liberate Technologies of San Carlos, Calif.

FIG. **10** is a block diagram of a system **1000** for providing audio/video programming according to another embodiment of the present invention. System **1000** is similar to systems **100** and **700**. However, in system **1000** video subsystem **104** comprises the video image generator **702**, which may be implemented in hardware and/or software. In this embodiment, a data packet that comprises a video image specification, such as data packet **732**, is not needed because video subsystem **104** itself creates the video images that compliment the audio service. FIG. **11** illustrates a process **1100** performed by video subsystem **104** according to the embodiment shown in FIG. **10**.

Process **1100** begins in step **1102**, where video subsystem **104** determines whether a trigger message from audio subsystem has been received. If a trigger message is received, control passes to step **1104**, otherwise control passes to step **1103**. In step **1103**, video subsystem **104** determines whether an asset queue timer has expired. If an asset queue timer expires, control passes to step **1140**, otherwise control passes back to step **1102**.

In step **1104**, video subsystem **104** parses the trigger message to determine the sound recording identifier specified therein. Next (step **1106**), video subsystem **104**, uses the pre-defined configuration data to determine a set of assets identifiers that are associated with the sound recording identifier determined in step **1104**. Video subsystem **104** then determines the screen position that is associated with each asset identifier in the set (step **1108**). Next (step **1112**), video subsystem **104** uses the pre-defined configuration data to determine whether there are any asset identifier queues associated with the sound recording identifier determined in step **1104**. If there are, control passes to step **1114**, otherwise control passes to step **1128**.

In step **1114**, video subsystem **104** selects one of the queues that the configuration data indicates is associated with the sound recording identifier. Next (step **1116**), video subsystem determines the asset identifier set in the selected queue that is at the "head" of the selected queue. After step **1116**, control passes to step **1118**.

In step **1118**, video subsystem **104** determines each asset identifier listed in the asset identifier set determined in step **1116** together with each asset identifier's associated screen position. Next (step **1120**), video subsystem **104** determines the duration associated with the asset identifier set determined in step **1116**. Next (step **1122**), video subsystem **104** activates the timer associated with the selected queue so that the timer will expire after X amount of time has expired, where X is equal to the duration determined in step **1118**. After step **1122**, control passes to step **1124**.

In step **1124**, video subsystem **104** determines whether there are additional asset identifier queues associated with the sound recording identifier. If there are, control passes to step **1126**, otherwise control passes to step **1128**. In step **1126**, video subsystem **104** selects a queue that is associated with the sound recording and that has not already been selected. After step **1126**, control passes back to step **1116**.

In step **1128**, video subsystem **104** retrieves the assets identified by the asset identifiers determined in steps **1106** and **1118**. Next (step **1130**), video subsystem **104** creates a video image using the retrieved assets, wherein each asset is positioned in the video image according its associated position. After step **1130**, control passes to step **1130**, where the video image is transmitted to transmission system **190**. After step **1132**, control passes back to step **1102**.

In step **1140**, video subsystem **104** determines the queue that is associated with the timer that expired. Next (step **1142**), video subsystem **104** increments the head pointer associated with the queue determined in step **1140** to point to the next asset identifier set in the queue if the queue determined in step **1140** is associated with the sound recording identifier determined in step **1104**. After step **1142**, control passes to step **1106**.

In another embodiment, the video images that complement the audio service are pre-generated. That is, they are generated prior to the time when they are scheduled to be displayed. For example, they may be generated one day or one week prior to when they are scheduled to be displayed.

In this embodiment where video images are pre-generated, a data structure (e.g., a configuration file) associates the sound recording identifiers listed in a playlist with an ordered set of video image identifiers, where each video image identifier

identifies a pre-generated video image. The set may contain one or more video image identifiers. If the ordered set of video image identifiers associated with a sound recording identifier contains more than one video image identifier, then each video image identifier in the set, except the video image identifier that is last in the order, is associated with a time duration. The data structure may also associate purchase information with each sound recording identifier.

FIG. **12** illustrates an exemplary data structure **1200** that associates sound recording identifiers from a playlist with a set of one or more video image identifiers. For example, sound recording identifier **1202** is associated with an ordered set **1204** of video image identifiers and is associated with purchase information **1205**.

The ordered set of video image identifiers **1204** includes video image identifiers **1210**, **1211**, and **1212**. Additionally, each video image identifier in set **1204**, except for video image identifiers **1212**, which is the last video image identifier in the order, is associated with a time duration.

Either video subsystem **104** or transmission system **170** may be able to retrieve the pre-generated video images from the storage unit in which they are stored. Thus, for example, the pre-generated video images may be stored in storage unit **185** or storage unit **186**. Similarly, either video subsystem **104** or transmission system **170** may be able to retrieve data structure **1200**.

If, for example, the pre-generated video images are stored in storage unit **185** and transmission system **170** has access to data structure **1200**, then the trigger message generated by audio subsystem **102** may be sent to transmission system **170** instead of to video subsystem **104**. In this embodiment, transmission system **170** performs process **1300** (see FIG. **13**).

Process **1300** begins in step **1302**, where transmission system **170** receives a trigger message that includes a sound recording identifier. Next (step **1304**) transmission system **170** parses the trigger message to determine the sound recording identifier included therein. Next (step **1305**), transmission system **170** accesses data structure **1200** to determine the ordered set of video image identifiers and purchase information that are associated with the sound recording identifier determined in step **1304**. Next (step **1306**), transmission system **170** retrieves from storage unit **185** the video image identified by the first identifier in the set.

Next (step **1308**), transmission system **170** determines, based on the purchase information (or lack thereof), whether it should overlay Buy button **250** on the video image or send a command to the receivers **180** that causes the receivers to overlay Buy button **205** on the video image. If it should, control passes to step **1310**, otherwise control passes to step **1311**. In step **1310**, transmission system **170** transmits to receivers **180** the most recently retrieved video image with Buy button **250** included in the video image (or transmits to receivers **180** the video image together with a command that instructs receivers **180** to display Buy button **250**). In step **1311**, transmission system **170** transmits to receivers **180** the video image only.

Next (step **1312**), transmission system **170** accesses data structure **1200** to determine whether there is a time duration associated with the video image transmitted in step **1310** or **1311**. That is, transmission system **170** determines whether data structure **1200** associates a time duration with the video image identifier that identifies the video image. If there is no time duration associated with the video image, then control passes back to step **1302**, otherwise control passes to step **1314**. In step **1314**, transmission system **170** sets a timer to expire after X seconds and activates the timer, where X is the time duration in seconds associated with the video image transmitted in step **1310** or **1311**. When the timer expires, transmission system **170** retrieves from storage unit **185** the video image identified by the next identifier in the set (step **1316**) After step **1316**, control passes back to step **1308**.

If, for example, the pre-generated video images are stored in storage unit **185** but transmission system **170** does not have access to data structure **1200**, then the trigger message is sent to video subsystem **104**, which will have access to data structure **1200**. In this embodiment, video subsystem **104** and transmission system **170** perform processes **1400** (see FIG. **14**A) and process **1450** (see FIG. **14**B), respectively. Alternatively, video subsystem **104** and transmission system **170** perform processes **1500** (see FIG. **15**A and **1550** (see FIG. **15**B), respectively.

Process **1400** begins in step **1402**, where video subsystem **104** receives a trigger message that includes a sound recording identifier. Next (step **1404**) video subsystem **104** parses the trigger message to determine the sound recording identifier included therein. Next (step **1406**), video subsystem **104** accesses data structure **1200** to determine the ordered set of video image identifiers that is associated with the sound recording identifier determined in step **1404**. Next (step **1407**), video subsystem **104** selects the first video image identifier from the ordered set of video image identifiers.

Next (step **1408**), video subsystem **104** transmits the most recently selected video image identifier to transmission system **170**. In addition to transmitting the video image to transmission system **170**, video subsystem may also transmit to transmission system **170** purchase information and/or commands that instruct transmission system **170** to overlay selectable buttons (e.g., Buy button **250**) on the video image to create an interactive service for the listeners. After step **1408**, control passes to step **1410**.

In step **1410**, video subsystem **104** accesses data structure **1200** to determine whether there is a time duration associated with the video image identifier transmitted in step **1408**. If there is no time duration associated with the video image identifier, then control passes back to step **1402**, otherwise control passes to step **1414**.

In step **1414**, video subsystem **104** sets a timer to expire after X seconds and activates the timer, where X is the time duration in seconds associated with the video image identifier. When the timer expires, video subsystem **104** selects the next identifier in the ordered set (step **1416**). After step **1416**, control passes back to step **1408**.

Process **1450** begins in step **1452**, where transmission system **170** receives a video image identifier and purchase information (if any) from video subsystem **104**. Next (step **1456**), transmission system **170** retrieves from storage unit **185** the video image identified by the received identifier. Next (step **1458**), transmission system **170** determines, based on the purchase information (or lack thereof), whether it should overlay Buy button **250** on the video image or send a command to the receivers **180** that causes the receivers to overlay Buy button **205** on the video image. If it should, control passes to step **1460**, otherwise control passes to step **1461**. In step **1460**, transmission system **170** transmits to receivers **180** the retrieved video image with Buy button **250** included in the video image (or transmits to receivers **180** the video image together with a command that instructs receivers **180** to display Buy button **250**). In step **1461**, transmission system **170** transmits to receivers **180** the video image only. After steps **1460** and **1461** control passes back to step **1452**.

Process **1500** begins in step **1502**, where video subsystem **104** receives a trigger message that includes a sound recording identifier. Next (step **1504**) video subsystem **104** parses the trigger message to determine the sound recording identi-

fier included therein. Next (step **1506**), video subsystem **104** accesses data structure **1200** to determine the ordered set of video image identifiers that is associated with the sound recording identifier determined in step **1504**. Next (step **1508**), video subsystem **104** transmits to transmission system **170** the ordered set of video image identifiers and the purchase information associated with the sound recording identifier. After step **1508**, control passes back to step **1502**.

Process **1550** is similar to process **1300**. Process **1550** begins in step **1552**, where transmission system **170** receives the ordered set of video image identifiers and purchase information. After step **1552**, transmission system **170** performs steps **1306-1316**. After step **1316**, control passes back to step **1552**.

If, for example, the pre-generated video images are stored in storage unit **186** instead of **185** and video subsystem **104** has access to data structure **1200**, then the trigger message generated by audio subsystem **102** is sent to video subsystem **104**. In this embodiment, video subsystem **104** performs process **1600** (see FIG. **16**).

Process **1600** begins in step **1602** where video subsystem **104** receives a trigger message that includes a sound recording identifier. Next (step **1604**) video subsystem **104** parses the trigger message to determine the sound recording identifier included therein. Next (step **1606**), video subsystem **104** accesses data structure **1200** to determine the ordered set of video image identifiers that is associated with the sound recording identifier determined in step **1604**. Next (step **1608**), video subsystem **104** retrieves from storage unit **186** the video image identified by the first identifier in the set. Next (step **1610**), video subsystem **104** transmits the most recently retrieved video image to transmission system **170**. In addition to transmitting the video image to transmission system **170**, video subsystem may also transmit to transmission system **170** purchase information and/or commands that instruct transmission system **170** to overlay selectable buttons (e.g., Buy button **250**) on the video image to create an interactive service for the listeners. After step **1610**, control passes to step **1612**.

In step **1612**, video subsystem **104** accesses data structure **1200** to determine whether there is a time duration associated with the video image transmitted in step **1610**. That is, video subsystem **104** determines whether data structure **1200** associates a time duration with the video image identifier that identifies the video image. If there is no time duration associated with the video image, then control passes back to step **1602**, otherwise control passes to step **1614**. In step **1614**, video subsystem **104** sets a timer to expire after X seconds and activates the timer, where X is the time duration in seconds associated with the video image. When the timer expires, video subsystem **104** retrieves from storage unit **186** the video image identified by the next identifier in the set (step **1616**). After step **1616**, control passes back to step **1610**.

While various embodiments/variations of the present invention have been described above, it should be understood that they have been presented by way of example only, and not limitation. Thus, the breadth and scope of the present invention should not be limited by any of the above-described exemplary embodiments, but should be defined only in accordance with the following claims and their equivalents.

The invention claimed is:

1. A method for providing a visual complement to an audio stream, comprising:

transmitting, from a first transmission system to a second transmission system, audio data corresponding to a selected song; and

transmitting a data packet that was generated using an identifier identifying the selected song, wherein the data packet includes a media asset identifier identifying a media asset and further includes song information associated with the selected song, the song information comprising the title of the song and the name of the artist who recorded the song, wherein

the step of transmitting the data packet comprises transmitting the data packet to a receiving system that is configured such that, in response to receiving the data packet, the receiving system automatically generates a video image using the information included in the data packet and automatically outputs the generated video image such that it is received by a display device that is operable to display the video image to a user of the display device without the user having to select a menu item, and

the generated video image includes the song information comprising the title of the song and the name of the artist.

2. The method of claim **1**, wherein the identified media asset is a still image associated with the song.

3. The method of claim **1**, further comprising:

after transmitting the data packet to the receiving system and while audio data corresponding to the song is being transmitted, transmitting to the receiving system a second data packet for the song, wherein the second data packet specifies one or more media asset identifiers, each of which identifies one or more media assets, said second data packet further comprising the song information associated with the song.

4. The method of claim **1**, further comprising:

selecting the song prior to transmitting, from the first transmission system to the second transmission system, said audio data; and

in response to selecting said song, transmitting to a video subsystem a trigger message, wherein the trigger message comprises an identifier associated with said selected song.

5. The method of claim **4**, wherein the video subsystem is configured to generate the data based, at least in part, on pre-defined configuration data and information included in the trigger message.

6. The method of claim **5**, wherein the video subsystem is configured to generate the video image specification in response to receiving the trigger message.

7. The method of claim **1**, wherein the data packet specifies a screen location that is associated with said media asset identifier.

8. The method of claim **1**, wherein the song is a song that falls within a particular category of songs, and said media asset identifier identifies a media asset associated with the particular category.

9. The method of claim **1**, wherein the data packet is transmitted while the audio data is being transmitted.

10. The method of claim **1**, wherein the video image is encoded according to a Moving Pictures Experts Group (MPEG) standard.

11. The method of claim **1**, further comprising:

generating the data packet; and

after generating the data packet, selecting the song from a playlist prior to transmitting the audio data corresponding to the selected song.

12. A system for providing a visual complement to an audio service, the system comprising:

an audio transmission system configured to transmit audio data corresponding to a sound recording specified in a playlist for a linear audio channel; and

a receiving system, comprising a receiver and a video image generator, the receiving system being configured to:

i) in response to receiving a data packet that was generated using an identifier identifying the sound recording, generate a video image in accordance with information included in the data packet, wherein the data packet includes a media asset identifier identifying a media asset and further includes sound recording information associated with the sound recording, the sound recording information comprising the title of the sound recording and the name of the artist who recorded the sound recording; and

ii) automatically output the generated video image such that it is received at a display device operable to display the video image to a user of the display device without the user having to select a menu item, wherein

the generated video image includes the song information comprising the title of the song and the name of the artist, and

the receiving system is configured to retrieve the identified media asset and use the retrieved media asset in generating the video image.

13. The system of claim **12**, wherein the data packet further includes information specifying a screen location that is associated with said media asset identifier.

14. The system of claim **12**, wherein the sound recording is a song that falls within a particular category of songs, and said media asset identifier identifies a media asset associated with the particular category.

15. The system of claim **12**, wherein the video image is encoded according to a Moving Pictures Experts Group (MPEG) standard.

16. The system of claim **12**, wherein said media asset identifier identifies a media asset associated with the sound recording.

17. A method for providing a visual complement to an audio stream, the method being performed by a music multicast system for providing said audio stream to a plurality of users essentially simultaneously and comprising:

the music multicast system automatically selecting a song from a set of available songs;

the music multicast system generating a data packet based on the selected song, the data packet including a media asset identifier identifying a media asset and further including song information associated with the selected song, the song information comprising the title of the song and the name of the artist who recorded the song;

as a result of automatically selecting the song, transmitting, from a first transmission system to a second transmission system, said audio stream, wherein said audio stream consists of audio data corresponding to said selected song; and

transmitting the data packet to a receiving system, wherein the receiving system is configured such that, in response to receiving the data packet, the receiving system automatically generates a video image using the information included in the data packet and automatically outputs the generated video image such that it is received by a display device that is operable to display the video image to a user of the display device without the user having to select a menu item, and

the generated video image includes the song information comprising the title of the song and the name of the artist and a still image identified by the media asset identifier.

* * * * *

REDACTED

HIGHLY CONFIDENTIAL-ATTORNEY'S EYES ONLY

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

MUSIC CHOICE, *Plaintiff*, v. STINGRAY GROUP INC. (f/k/a STINGRAY DIGITAL GROUP INC.) and STINGRAY MUSIC USA, INC., *Defendants*.	§ § § § § § § § § § § §	C.A. No: 2:16-cv-00586-JRG-RSP (Lead Case) **FILED UNDER SEAL**

DEFENDANTS' *DAUBERT* MOTION TO EXCLUDE
CERTAIN OPINIONS AND TESTIMONY OF
MUSIC CHOICE'S DAMAGES EXPERT, DR. KEITH R. UGONE

TABLE OF CONTENTS

I. INTRODUCTION 1
II. BACKGROUND 2
A. Background of this Action 2
B. Music Choice and Its Music Services 3
C. Stingray and Its Music Services 4
D. The Patents-in-Suit 5
E. Dr. Ugone's Damages Reports 5
F. Dr. Ugone's Report On Commercial Success 6
III. ARGUMENT 6
A. Legal Standard 6
B. Dr. Ugone's Opinions With Respect To Lost Profits Should Be Excluded 7
1. Dr. Ugone Incorrectly Applied Panduit Factor 2 In Calculating Lost Profits With Respect To The Visual Complement Patent 8
2. Dr. Ugone's Calculation Of Lost Profits With Respect To The VOD Linking Patents Is Speculative And Unreliable 9
C. Dr. Ugone's Opinions With Respect To Price Erosion Should Be Excluded As Flawed, Speculative, And Unreliable 12
D. Dr. Ugone's Opinions With Respect To Commercial Success Should Be Excluded As Unreliable And Based On A Flawed Methodology 14
IV. CONCLUSION 15

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Page(s)

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Crystal Semiconductor Corp. v. TriTech Microelectronics Int'l, Inc.,
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482 F.3d 347 (5th Cir. 2007).....7

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Fed. R. Evid. 702 6

Defendants Stingray Group Inc. (f/k/a Stingray Digital Group Inc.) and Stingray Music USA, Inc. (collectively, "Stingray") respectfully move to exclude certain opinions and testimony of Plaintiff Music Choice's ("MC") damages expert, Dr. Keith R. Ugone.

I. INTRODUCTION

This is a patent infringement action involving increasingly irrelevant technology—linear audio and video on demand ("VOD") music channels transmitted to consumers by cable and satellite television providers. The number of cable and satellite television subscribers is rapidly declining each year. Nonetheless, MC's damages expert, Dr. Keith R. Ugone, opined that MC suffered over [redacted] in lost profits and price erosion damages based on the flawed assumption that, had Stingray not offered purportedly infringing products, the prices paid for MC's services by its customers—i.e., the same cable and satellite television providers whose subscriber counts are ***decreasing***—would not have changed. Dr. Ugone did not consider and/or discuss any market forces in making this assumption. Similarly, Dr. Ugone did not consider and/or discuss the ample evidence of [redacted] several years before Stingray even entered the market with its allegedly infringing technology. Instead, Dr. Ugone simply looked at what MC's customers agreed to pay immediately prior to Stingray's alleged infringement, and determined that was the only evidence needed to support his damages calculations. Accordingly, Dr. Ugone's lost profits and price erosion damages opinions are flawed, speculative, unreliable and should be excluded.

In addition, Dr. Ugone should be precluded from testifying about commercial success in support of MC's contention that U.S. Patent No. 9,357,245 ("the '245 patent") is not obvious over the

prior art.[1] Dr. Ugone's opinion is devoid of any evidence that MC's services purportedly covered by the '245 patent, namely, MC's linear audio music channels with visual complements, achieved any measurable level of success, as required by Federal Circuit law. For example, Dr. Ugone did not conduct a market share analysis or provide financial or sales data corresponding to MC's linear audio music channels. Accordingly, Dr. Ugone's methodology for determining commercial success, as it relates to obviousness of the '245 patent, is flawed and should be excluded.

II. BACKGROUND

A. Background of this Action

Until recently, linear audio and/or VOD music channels were primarily provided to consumers (hereafter, "subscribers") by multichannel video programming distributors ("MVPDs"), i.e., cable and satellite television companies. (*See* Expert Report of Keith R. Ugone, Ph.D, dated September 27, 2017 ("Report") (Ex. 1), ¶2). In order to do so, an MVPD executes a contract with a music service provider (e.g., MC, Stingray, DMX, XMSirius), where the MVPD agrees to pay the music service provider a monthly rate per subscriber ("subscriber rate") in exchange for one or more music services, including, for example, linear audio and/or VOD music channels, among others. (*See, e.g.,* Report (Ex. 1), ¶¶40-41, 62). The linear audio and/or VOD music channels are then provided by each MVPD to its respective subscribers as part of a larger cable package, which includes several hundred additional television channels. (*Id.*) There is no evidence in the record that any subscriber: (1) has chosen an MVPD based on the music channels offered by the MVPD; or (2) has cancelled his/her subscription based on the music channels offered (or not offered) by the MVPD. (Deposition Transcript of Keith Ugone, Ph.D, dated May 10, 2019 ("Ugone Tr.") (Ex. 2), 117:17-118:6, 159:1-6).

[1] In view of the related IPR proceedings, the parties agree that there are no prior art invalidity arguments remaining with respect to the other two patents-in-suit. Dr. Ugone should, therefore, be precluded from providing any commercial success testimony as to those patents as well.

Typically, each MVPD executes a contract with only one music services provider at a time for a period of several years. (Report (Ex. 1), ¶¶40-41, 62). At the end of the contract, the MVPD can either (1) execute a contract extension with the existing provider, or (2) execute a new contract with another provider. Regardless of whether an MVPD executes a contract extension or a new contract, it is common for subscriber rates to change at the end of each contract. (*See, e.g.,* Report (Ex. 1), ¶¶67-71).

The market for MVPDs, and consequently the music services market, is changing. (Supplemental Rebuttal Expert Report of Michele Riley ("Riley Report") (Ex. 3), ¶¶81-83 (citing www.nasdaq.com/article/cord-cutting-continues-to-impact-pay-tv-services-ott-a-boon-cm834151 (Ex. 20))). Subscribers no longer need to subscribe to an MVPD in order to have access to television programming, including for example, audio and VOD music channels. (*Id.*) Now, subscribers have access to the same programming through a variety of sources, including, for example, Netflix, HBO GO, and Amazon Prime, among others. (*See id.*) Thus, the number of MVPD subscribers is declining each year. (*Id.*)

B. Music Choice and Its Music Services

MC is headquartered in Horsham, Pennsylvania and is owned by several MVPDs, including Cox Communications, Inc., Comcast Corporation, Charter Communications, and Time Warner Inc. (collectively, the "Partner MVPDs"). (Report (Ex. 1), ¶31). [redacted] (Deposition Transcript of Christina Tancredi, dated September 15, 2017 ("Tancredi Tr.") (Ex. 4), 296:21-298:13).

MC launched linear audio music channels in 1994. (Report (Ex. 1), ¶29). Since then, it has offered several audio and VOD music channel services. (*Id.*, ¶¶43-44, Table 4). Not all of MC's services are covered by the patents-in-suit. (*Compare*, Report (Ex. 1), Table 4 to R12-14 to the Russ Invalidity Report (Exs. 5-7). Some of the services offered by MC are its (1) Audio Service; (2) SWRV

Service; and (3) VOD Service. ([redacted]) (Ex. 8) at MC-Stingray00138162-163). MC's Audio Service consists of linear audio music channels (*id.*); its SWRV Service which consists of MC's linear music video networks (*id.*); and its VOD Service which consists of video-on-demand music programming (*id.*). The MVPDs that MC contracts with receive one or more of these services. (*See, e.g., id.*)

C. Stingray and Its Music Services

Stingray is a "world-leading provider" of music services to MVPDs, including Stingray Music (linear audio music), Stingray Music Videos (VOD), Stingray Concerts, and Stingray Karaoke. (www.stingray.com/about-us/who-we-are (Ex. 21)). Stingray's linear audio music channels are provided through its UbiquiCAST system. (Report (Ex. 1), ¶47) Stingray's linear audio music channels include "on screen enhancements," [redacted] (*Id.*, ¶¶48-49). Stingray's linear audio service, [redacted] is a music service that enables an MVPD to stream linear audio music along with an image to subscribers' televisions. (*Id.*, ¶48, Fig. 5). [redacted]. (*Id.*, ¶48; Riley Report (Ex. 3), ¶9). Stingray provides its linear audio service [redacted] to over 300 MVPDs in the United States. (STINGRAY118548 (Ex. 9)). [redacted] (Ugone Tr. (Ex. 2), 163:4-164:19, 168:19-169:14; [redacted].

Stingray also offers MVPDs music video TV channels through [redacted].

(STINGRAY118548 (Ex. 9)). Although Stingray provides at [redacted], [redacted]t (the "Stingray Music TV App"). (*Id.*; Report (Ex. 1), ¶49). Stingray first provided [redacted] with the accused Stingray Music TV App in March 2015. ([redacted](Ex. 11), pp. 1, 9); [redacted](Ex. 12)). Prior to March 2015, Stingray did not offer or provide any music video TV channels to MVPDs that are accused of infringing the patents-in-suit. (*See id.*; Report (Ex. 1), ¶¶62, 88).

D. The Patents-in-Suit

MC filed this action on June 6, 2016, and thereafter, filed its third amended complaint on March 17, 2017, asserting infringement of five patents. (Dkt. 1, Dkt. 84). After a stay of this action pending IPRs, three patents-in-suit remain: U.S. Patent No. 9,357,245 (the "'245 patent" or the "Visual Complement Patent"), U.S. Patent No. 7,320,025 (the "'025 patent"), and U.S. Patent No. 9,351,045 (the "'045 patent"). (Dkt. 173.) The '245 patent is directed to enhancing the visual display a user sees when tuned to a broadcast music channel on his or her television set with graphics, e.g., album art, relating to the song being played. (*See e.g.*, '245 patent (Dkt. 1-2), 4:54-62.)

The '025 and '045 patents (collectively, the "VOD Linking Patents") are related patents and share a common specification. (*See* '025 patent (Dkt. 1-3); '045 patent (Dkt. 1-4)). The purported invention of the VOD Linking Patents is enabling users to select and watch music videos of their choosing while the music and/or video currently on the screen continues to play. ('025 Patent (Dkt. 1-3, 1:46-56; Report (Ex. 1), ¶42).

E. Dr. Ugone's Damages Reports

Dr. Ugone submitted a damages report on September 27, 2017 ("Report") (Ex. 1), and a post-stay supplemental report on April 12, 2019 ("Supplemental Report") (Ex. 13). In the Report, Dr. Ugone

concluded that MC suffered (1) lost profits due to Stingray's alleged infringement of both the Visual Complement Patent and the VOD Linking Patents; and (2) price erosion due to Stingray's alleged infringement of the VOD Linking Patents.[2] (Report (Ex. 1), Table 2; Ugone Tr. (Ex. 2), 70:13-24). Dr. Ugone did not provide a calculation for any reasonable royalty damages. (*See, generally, Id.*) In the Supplemental Report, Dr. Ugone updated the damages calculations, but his methodologies did not change. (Supplemental Report (Ex. 13), Table 2, ¶¶4-17).

F. Dr. Ugone's Report On Commercial Success

In addition, Dr. Ugone prepared a report on commercial success in support of MC's position that the patents-in-suit are non-obvious. (("Commercial Success Report") (Ex. 14), Ugone Tr. (Ex. 2), 149:9-25). Despite not providing a market share analysis, let alone any evidence of the success of MC's linear audio music channels (*See* Commercial Success Report (Ex. 14), ¶¶37-45; Ugone Tr. (Ex. 2), 121:10-19, 253:4-16), Dr. Ugone concluded that [redacted] (Commercial Success Report (Ex. 14), ¶37).

III. ARGUMENT

A. Legal Standard

An expert witness may provide opinion testimony if "(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the facts of the case." Fed. R. Evid. 702; *see also Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 149 (1999); *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 592-93 (1993). "Rule 702 demands that expert

[2] At that time, there were three VOD Linking Patents in suit—[redacted] (Report (Ex. 1), ¶11, Table 2; Ugone Tr. (Ex. 2), 75:22-25.)

testimony related to scientific, technical or other specialized knowledge, which does not include unsubstantiated speculation and subjective beliefs." *SynQor, Inc. v. Artesyn Techs., Inc.*, No. 2:07-cv-497-TJW-CE, 2010 U.S. Dist. LEXIS 144244 (Dec. 13, 2010 E.D. Tex.). "The reliability analysis applies to all aspects of an expert's testimony: the methodology, the facts underlying the expert's opinion, and the link between the facts and the conclusion." *Knight v. Kirby Inland Marine, Inc.,* 482 F.3d 347, 355 (5th Cir. 2007). Although the Fifth Circuit and other courts have identified various factors that the district court may consider in determining whether an expert's testimony should be admitted, the nature of the factors that are appropriate for the court to consider is dictated by the ultimate inquiry – whether the expert's testimony is sufficiently reliable and relevant to be helpful to the finder of fact and thus warrant admission at trial. *U.S. v. Valencia*, 600 F.3d 389, 424 (5th Cir. 2010).

B. Dr. Ugone's Opinions With Respect To Lost Profits Should Be Excluded

Dr. Ugone opines that MC should be awarded [redacted] in lost profits for infringement of the Visual Complement Patent and [redacted] in lost profits for infringement of the VOD Linking Patents. (Supplemental Report (Ex. 13), Table 2.) "To recover lost profits, the patentee bears the burden of proof to show a reasonable probability that but for infringement, it would have made the sales that were made by the infringer." *Presido Components, Inc. v. Am. Techn. Ceramics Corp.*, 875 F.3d 1369, 1380 (Fed. Cir. 2017) (citations omitted). "But-for causation can be proven using the test given in *Panduit Corp. v. Stahlin Bros. Fibre Works, Inc.,* 575 F.2d 1152 (6th Cir. 1078)." *Id.* "The four-factor *Panduit* test requires the patentee to show: (1) demand for the patented product; (2) an absence of acceptable, noninfringing substitutes; (3) manufacturing and marketing capability to exploit the demand; and (4) the amount of profit that would have been made." *Id.* (citing *Panduit*, 575 F.2d at 1156). However, Dr. Ugone's application of *Panduit* factors to the facts of this case is unreliable, and

therefore, Dr. Ugone's lost profits opinions should be excluded.

1. Dr. Ugone Incorrectly Applied *Panduit* Factor 2 In Calculating Lost Profits With Respect To The Visual Complement Patent

Dr. Ugone does not dispute that the second *Panduit* factor is the "absence of acceptable, noninfringing substitutes." *Presido*, 875 F.3d at 1380; Report (Ex. 1), n. 92. Nonetheless, in providing his opinions, Dr. Ugone characterizes the second *Panduit* factor differently, namely, as whether [redacted] (Report (Ex. 1), ¶53). While Dr. Ugone alleges that [redacted] (*id.*, n. 92), Dr. Ugone did not perform this analysis with respect to MC's purported lost profits resulting from Stingray providing [redacted].

Dr. Ugone understands that the Visual Complement Patent teaches, *inter alia*, "providing on-screen visual complements, such as album art or artist images associated with the song that is playing . . . within linear [audio] music channels." (Report (Ex. 1), ¶42.b). Dr. Ugone further understands that [redacted]. (Report (Ex. 1), ¶¶47-49). Nonetheless, Dr. Ugone opines that [redacted] is not an acceptable non-infringing substitute because of "the importance of the features and benefits enabled by the Visual Complement Patent." (Supplemental Report, (Ex. 13) ¶22.a.). But this is not the correct methodology for determining whether acceptable non-infringing alternatives exist under *Panduit*. Rather, "[t]he correct inquiry under *Panduit* is whether a non-infringing alternative would be acceptable compared to the ***patent owner's product*** . . ." *Presido*, 875 F.3d at 1381 (emphasis added). Dr. Ugone did not determine whether Stingray's [redacted] is an acceptable non-infringing alternative ***as compared to MC's linear audio music channels***. Had he done this analysis, he would have determined that it is. (*See* Ugone Tr.

(Ex. 2), 163:4-164:18). Indeed, Dr. Ugone does not dispute that [redacted]. (Ugone Tr. (Ex. 2), 163:4-164:19). [redacted] (*Id.*)

Accordingly, Dr. Ugone's determination that MC should be awarded lost profits for Stingray's alleged infringement of the Visual Complement Patent is flawed and unreliable, and his opinions with respect to that determination should be excluded. *See Spellbound Dev. Group Inc. v. Pac. Handy Cutter Inc.*, 2012 U.S. Dist LEXIS 188907 at *3 (C.D. Cal. Feb. 24, 2012) (excluding expert's damages calculation because the expert, *inter alia*, provided no basis for his conclusion that there were no acceptable non-infringing alternatives).

2. Dr. Ugone's Calculation Of Lost Profits With Respect To The VOD Linking Patents Is Speculative And Unreliable

Dr. Ugone's lost profits analysis relating to the VOD Linking Patents is based on an assumption that is speculative and flawed and, as such, should be excluded. Dr. Ugone determined that [redacted] as a result of Stingray's alleged infringement of the VOD Linking Patents and calculated that MC lost over [redacted] as a result. (Supplemental Report (Ex. 13), Table 2). Dr. Ugone's calculation is based on the assumption that [redacted]. (Report (Ex. 1), ¶¶80-83; Supplemental Report (Ex. 13), ¶8; Ex. 7 to Supplemental Report ("[redacted] Lost Profits Calculation") (Ex. 15)). But Dr. Ugone provides no basis for his assumption.

During his deposition, Dr. Ugone explained that he chose the monthly subscriber rate of [redacted] simply because it was the agreed upon monthly rate in [redacted] contract with MC prior to [redacted] contract with Stingray. (Ugone Tr. (Ex. 2), 179:9-180:25). However, Dr. Ugone failed to consider and/or discuss the plethora of evidence demonstrating that monthly subscriber rates for music

services purportedly covered by the VOD Linking Patents varies, including that: [redacted] (Ex. 16) at MC-Stingray00347118, MC-Stingray00347187; Report (Ex. 1), Table 4). Tellingly, when questioned at his deposition, Dr. Ugone could not explain the discrepancy between this evidence and his assumed [redacted] monthly subscriber rate. (Ugone Tr. (Ex. 2), 182:5-186:23).

The speculative nature of Dr. Ugone's assumption is further compounded by the fact that there is no evidence that [redacted] for a music service covered by the VOD Linking Patents, including during the damages period.[3] *See O2 Micro Int'l Ltd. v. Beyond Innovation Tech.*, 2005 U.S. Dist LEXIS 47075 (E.D. Tex. Dec. 15, 2005) (damages expert's report lacked sufficient analysis, where price was 4-times higher than any price for competing products during the damages period). Importantly, Dr. Ugone's assumed monthly subscriber rate of [redacted] (Ex. 17) at MC-Stingray00138355). Indeed, the [redacted]:

[redacted]

[3] The damages period for the VOD Linking Patents is March 2015 to August 2019. (Ugone Tr. 75:11-17.)

[redacted]

(*Id.*) (emphasis added). But Dr. Ugone did not even attempt to determine the amount of the [redacted]

Moreover, Dr. Ugone's assumption that the monthly subscriber rate will remain unchanged contradicts his assumption regarding price erosion that [redacted]. (Ugone Tr. (Ex. 2), 194:19-195:16) For example, MC's Chief Operating Officer, Ms. Christina Tancredi, testified that [redacted]. (Tancredi Tr. (Ex. 4), 296:21-298:13). Dr. Ugone was aware of this testimony (Ex. 3 to Supplemental Report ("Supplemental Information Considered") (Ex. 18), p. 1), but did not explain why [redacted]. That Dr. Ugone only assumed that [redacted] in the context of price erosion damages, but not lost profits damages, speaks to the unreliability of Dr. Ugone's damages calculation.

Finally, that Dr. Ugone's assumed monthly subscriber rate is speculative is further supported by the fact that Dr. Ugone's damages reports are devoid of any discussion regarding price elasticity including, for example, the effect that lower MVPD subscriber counts may have on [redacted] willingness to continue paying a monthly subscriber rate of [redacted]. (Ugone Tr. (Ex. 2), 181:9-15); *see also Crystal Semiconductor Corp. v. TriTech Microelectronics Int'l, Inc.*, 246 F.3d 1336, 1359-60 (Fed. Cir. 2001) (excluding jury award for lost profits and price erosion damages because, *inter alia*, "the record does not contain sufficient evidence to show the reaction of the market if, 'but for' infringement, plaintiff would have tried to charge more" for its product). Dr. Ugone acknowledged that [redacted] subscriber count is decreasing each year (*see, e.g.,* [redacted] (Ex.

15)). Nonetheless, Dr. Ugone did not explain why, in the face of decreasing subscribers, [redacted] would be willing to pay MC a monthly subscriber rate that is [redacted] than what it agreed to pay Stingray for a similar type of music service.

Dr. Ugone's calculation of the lost profits suffered by MC due to Stingray's alleged infringement of the VOD Linking Patents is based on a speculative assumption, and, therefore, his opinions as to these damages should be excluded. *See Moore v. Int'l Paint, LLC*, 547 Fed.Appx. 513, 516 (5th Cir. 2013) (excluding expert's testimony because he "made a number of . . . assumptions that, while not strictly inconsistent with the evidence, had no basis in the record").

C. Dr. Ugone's Opinions With Respect To Price Erosion Should Be Excluded As Flawed, Speculative, And Unreliable

"To prove price erosion damages, a plaintiff must show that 'but for' infringement, it would have sold its product at higher prices." *Engineered Prod. Co. v. Donaldson Co., Inc.*, 147 Fed.Appx. 979, 990 (Fed. Cir. 2005) (citations omitted). "[T]he patentee's price erosion theory must account for the nature, or definition of the market, similarities between any benchmark market and the market in which price erosion is alleged, and the effect of the hypothetically increased price on the likely number of sales at that price in the market." *Crystal Semiconductor*, 246 F.3d at 1357. Where an expert's "finding of causation" for price erosion damages "is not adequately supported by the record," his opinions should be excluded. *Spellbound*, 2012 U.S. Dist. LEXIS 188907, at *3.

Dr. Ugone's price erosion opinions are flawed, speculative, and unreliable. Dr. Ugone contends that MC has suffered [redacted], collectively, in price erosion from [redacted] MVPDs with whom MC entered into agreements to provide music services. (Supplemental Report (Ex. 13), Table 4; *see also* Ex. 8 to Supplemental Report ("Cited Price Erosion Evidence") (Ex. 19)). For each of these MVPDs, [redacted]. (*See generally* Cited Price Erosion Evidence (Ex. 19)). Dr. Ugone opined that the [redacted]

[redacted] is solely due to Stingray's alleged infringement. (Ugone Tr. (Ex. 2), 210:24-211:6). However, Dr. Ugone's damages reports are devoid of any discussion and/or consideration of the many other possible reasons for the lower monthly subscriber rates.

First, Dr. Ugone did not take into account whether any of Stingray's ***non-infringing music services*** caused the MVPDs to lower the monthly subscriber rates. (Ugone Tr. (Ex. 2), 199:5-11). This is problematic given Dr. Ugone's admissions that: [redacted] (Ugone Tr. (Ex. 2), 198:3-6; 200:13-201:14). On this basis, alone, Dr. Ugone's price erosion opinions should be excluded. *See Spellbound*, 2012 U.S. Dist. LEXIS 188907, at *3-4 (excluding expert's calculation of price erosion because it was "based on a finding that there were no acceptable non-infringing substitutes," but "[t]he expert [did] not appear to discuss the basis for this conclusion").

In addition, Dr. Ugone did not consider and/or provide opinions regarding several other factors that may have caused the monthly subscriber rates to drop, including, for example [redacted] (*id.*, 209:2-210:23)[4]. (*See also* Report (Ex.

[4] Indeed, for at least some of the [redacted] MVPDs, Music Choice did not provide [redacted]. (*See, e.g.*, Music Choice Affiliation Agreement with [redacted], (Ex. 22), p. 1 [redacted]) (emphasis added)).

1), ¶¶84-93; Supplemental Report, (Ex. 13), ¶¶12-17). Accordingly. Dr. Ugone's price erosion opinions should be excluded. *See Ericsson, Inc. v. Harris Corp.*, 2001 U.S. Dist. LEXIS 26485, at *22 (E.D. Tex. Mar. 13, 2001) (excluding damages expert's testimony because, *inter alia*, he did not, "in his analysis, sufficiently take[] into consideration all of the many other factors that could cause a manufacturer of a product to lower prices, which undermines the reliability of his conclusion").

Finally, Dr. Ugone's price erosion opinions should be excluded because they are based on the flawed assumption that price erosion can result from agreements with MVPDs to whom Stingray did ***not*** even offer the allegedly infringing Stingray Music TV App. (Ugone Tr. (Ex. 2), 194:19-195:16). [redacted]. (Cited Price Erosion Evidence (Ex. 19), pp. 9-10, 23-25). Nonetheless, Dr. Ugone opines that MC could have suffered price erosion based on the assumption that these MVPDs are [redacted] (Ugone Tr. (Ex. 2),196:7-197:3). But Dr. Ugone cites no documentary evidence supporting this assumption. Accordingly, Dr. Ugone's assumption is speculative, and his opinions related thereto should be excluded. *See Engineered Prod.*, 147 Fed.Appx. at 990 (excluding price erosion damages because the evidence that plaintiff's customer was aware of defendant's bid to a third party was "too speculative to support the necessary inference" that plaintiff's customer knew of the bid).

D. Dr. Ugone's Opinions With Respect To Commercial Success Should Be Excluded As Unreliable And Based On A Flawed Methodology

In support of MC's claim that the Visual Complement Patent is not obvious, Dr. Ugone offered opinions that MC's linear audio music channels are commercially successful. (Commercial Success Report (Ex. 14), ¶¶37-49). "Evidence of commercial success . . . requires a patentee to establish [a] nexus between the claimed invention and the commercial success of a product or method."

Datatreasury Corp. v. Wells Fargo & Co., No. 2:06-cv072, 2010 U.S. Dist. LEXIS 150694, at *54 (Feb. 25, 2010 E.D. Tex.) "A prima facie case of nexus is generally made out when the patentee shows both that there is commercial success, and that the thing (product or method) that is commercially successful is the invention disclosed and claimed in the patent." *Id.* at *54-55. Dr. Ugone identifies MC's linear audio music channels as the service/product covered by the Visual Complement Patent (Commercial Success Report (Ex. 14), ¶41), but he does not determine that the linear audio music channels are commercially successful in accordance with Federal Circuit law.

Dr. Ugone cites to no evidence purportedly demonstrating the success of MC's linear audio music channels, themselves. Rather, Dr. Ugone cites to [redacted]. (Commercial Success Report (Ex. 14) ¶¶39-40). Without evidence of success of MC's linear audio music channels, Dr. Ugone cannot possibly opine that any success is attributed to the features of the Visual Complement Patent and, as such, Dr. Ugone's testimony should be excluded. *See Datatreasury*, 2010 U.S. Dist. LEXIS 150694, at *55-56 (excluding expert's testimony of commercial success because he did not have a reliable basis to demonstrate nexus).[5]

IV. CONCLUSION

In view of the foregoing, Stingray respectfully requests that the court grant its *Daubert* motion to exclude certain testimony and opinions of Dr. Ugone.

[5] To the extent Music Choice contends that "high viewership" or "popularity" (Commercial Success Report (Ex. 14), ¶¶41-45) is akin to commercial success, it is not. *Datatreasury*, 2010 U.S. Dist. LEXIS 150694, at *61 ("use does not necessarily indicate commercial success of the claimed invention because what is claimed may not necessarily drive what is sold or what is commercially successful").

REDACTED

HIGHLY CONFIDENTIAL-ATTORNEY'S EYES ONLY

Dated: May 31, 2019

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

On May 31, 2019, Julie Bookbinder and Elana Araj, counsel for Defendants, conferred with Robert Rhoad, counsel for Plaintiff, as required by Local Rule 7(h). Counsel for Plaintiff confirmed that Plaintiff opposes this motion. Discussions conclusively ended at an impasse, leaving an open issue for the Court to resolve.

/s/ Joshua L. Raskin
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CERTIFICATE OF SERVICE

The undersigned certifies that on this 31st day of May 2019, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document by electronic mail under Local Rule CV-5(d).

/s/ Joshua L. Raskin
Joshua L. Raskin

CERTIFICATE OF AUTHORIZATION TO FILE UNDER SEAL

Pursuant to Local Rule 5(a)(7)(A), the undersigned hereby certifies that the corresponding documents were filed under seal pursuant to the Court's First Amended Stipulated Protective Order (Dkt. No. 132).

/s/ Joshua L. Raskin
Joshua L. Raskin

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

MUSIC CHOICE,

Plaintiff,

v.

STINGRAY DIGITAL INC. (f/k/a STINGRAY DIGITAL GROUP INC.) and STINGRAY MUSIC USA, INC.,

efen ants.

Civil Action No. 2:16-CV-0586-JRG-RSP

LEAD CASE

Jury Trial Demanded

[redacted]

MUSIC CHOICE'S ALTERNATIVE MOTION FOR LEAVE TO SERVE THE SUPPLEMENTAL EXPERT REPORT OF SAMUEL RUSS, PH.D.

TABLE OF CONTENTS

I. INTRODUCTION 1

II. STATEMENT OF FACTS 1

III. LEGAL STANDARDS 2

IV. ARGUMENT 3

A. If the Court Were to Deny Music Choice's Motion, Service of Dr. Russ's Supplemental Report Would Be Both Appropriate and Necessary In Order to Allow Music Choice to Respond to Dr. Shamos's Untimely New Opinions 3

B. Dr. Russ's Supplemental Report Would Be Proper under the *Sierra* Factors Because the Testimony is Important, Does Not Prejudice Stingray, and Responds to Dr. Shamos's Previously Undisclosed Opinions 5

V. CONCLUSION 6

INDEX OF A REVIATIONS

A REVIATION	REFERENCE
’245 patent	U.S. Patent No. 9,357,245
Ex. __	The corresponding exhibit attached to the Banks Decl.
Banks Decl.	Declaration of Ryan Banks in Support of Music Choice’s Alternative Motion to Serve the Supplemental Report of Samuel Russ, Ph.D.
POSITA	Person having ordinary skill in the art

TABLE OF AUTHORITIES

Page(s)

Cases

Brazley v. State,
866 F.2d 120 (5th Cir. 1989) 6

Asset Sec. Inc. v. Electronic Warfare Assocs., Inc.,
No. 2:15-CV-01470-JRG-RSP, 2018 WL 453732 (E.D. Tex. Jan. 17, 2018).....2

Neodynamics, Inc. v. Dynamic Energetics State, Inc.,
No. 2:17-CV-00371-RSP, 2018 WL 4732419 (E.D. Tex. Sep. 30, 2018) 2, 3

Sierra Club v. Clear Point Oil Co.,
73 F.3d 546 (5th Cir. 1996) 5

Villegas v. Competent Performance Pros., Inc.,
No. SA-15-CV-473-XR, 2017 WL 816872 (W.D. Tex. Mar. 1, 2017).....2, 3, 4, 6

Other Authorities

Federal Rule of Civil Procedure 37 .....1, 2

Federal Rule of Civil Procedure 26 .....1, 2, 5

I. INTRODUCTION

Music Choice files this motion, in conjunction with its reply to Stingray's opposition to Music Choice's *a ert* motion seeking to exclude Stingray's expert's (Dr. Shamos) untimely non-infringement and invalidity opinions from evidence at trial and seeking alternative relief thereto. In particular, in the event the Court denies that motion, Music Choice requests, in the alternative, that the Court grant this motion for leave to serve a supplemental report from its technical expert (Dr. Russ) addressing Dr. Shamos' new opinions.

As described in detail in Music Choice's *a ert* motion (Dkt. 188), Dr. Shamos disclosed his new opinions for the first time in his May 1, 2019 deposition, nearly *t o years after* the Court's expert designation deadlines. Dr. Russ's Supplemental Report is limited to his rebuttal to those new opinions, which were not disclosed in Dr. Shamos's previously served non-infringement and invalidity reports. Because of Dr. Shamos's delay in revealing his opinions, Dr. Russ was unable to respond during the formal expert discovery period. Accordingly, to the extent the Court opts not to exclude Dr. Shamos's new opinions, Dr. Russ's Supplemental Report is proper rebuttal under Federal Rules of Civil Procedure 26(a)(2)(D)(i), 26(a)(2)(D)(ii), and 26(a)(2)(E), and is substantially justified and harmless under Federal Rule of Civil Procedure 37.

II. STATEMENT OF FACTS

The relevant facts and circumstances relating to Dr. Shamos's untimely, new non-infringement and validity opinions are set forth in Music Choice's *a ert* Motion seeking to exclude Dr. Shamos from expressing those opinions at trial. Dkt. 188. Stingray filed its opposition to that Motion on July 16, 2019. Dkt. 213. At no time has Stingray ever supplemented, or sought leave of the Court to supplement, Dr. Shamos's expert reports to include his new opinions. For the reasons set forth in Music Choice's *a ert* Motion, as well

as the accompanying reply brief in support thereof that Music Choice is filing in conjunction herewith, the Court should reject Stingray's attempts to justify Dr. Shamos's untimely opinions and grant Music Choice's motion.

Nevertheless, Music Choice respectfully requests, in the alternative, that in the event the Court were to deny Music Choice's *a ert* Motion, it be granted leave to serve the Supplemental Expert Report of Dr. Russ attached as Exhibit A.

Music Choice conferred with Stingray regarding service of Dr. Russ's Supplemental Report on July 24 and 25, 2019. Defendants have indicated that they oppose this motion.

III. LEGAL STANDARDS

The threshold issue in assessing the propriety of a proposed supplemental report is whether it "may be properly characterized as 'supplemental.'" *eo yna ics, nc.* . *yna nergetics S, nc.*, No. 2:17-CV-00371-RSP, 2018 WL 4732419, at *2 (E.D. Tex. Sep. 30, 2018). A "supplemental" report "adds to a previously-served report without going beyond the opinions expressed in the [prior] report, and without using information available prior to the deadline for service of the supplemented report." *A S, nc.* . *ic et et or , nc.*, No. 2:15-CV-01470-JRG-RSP, 2018 WL 453732, at *4 (E.D. Tex. Jan. 17, 2018) (citing *Sierra l* . *e ar Point il o.*, 73 F.3d 546, 569-71 (5th Cir. 1996) ("The purpose of rebuttal and supplementary disclosures is just that—to rebut and supplement.").

Where a deposition taken after the expert disclosure period provides important information for the first time, an expert's supplemental report may respond to it. *illegas* . *eq ent Perfor ance Pro ., nc.*, No. SA-15-CV-473-XR, 2017 WL 816872, at *4 (W.D. Tex. Mar. 1, 2017) (finding that where adverse witness's "deposition was not taken until *after* the deadline for expert disclosures, these portions of [expert's supplemental report] are based on information that *as not* available prior to the deadline for expert disclosures") (emphasis

original). A supplemental report can similarly be used as a method of responding to new opinions criticizing an expert's opening report. *See eo yna ics*, 2018 WL 4732419, at *3.

This Court has explained that the consequence for untimely or insufficient disclosure per Rule 26 is subject to Rule 37. Specifically,

> "[T]he party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at trial, unless the failure was substantially justified or is harmless." Fed. R. Civ. P. 37(c)(1). When determining substantial justification or harm, courts consider[] (1) the importance of the witness's testimony; (2) the prejudice to the opposing party of allowing the witness to testify; (3) the possibility of curing any such prejudice by a continuance; and (4) the explanation, if any, for the party's failure to comply with the discovery order or rules.

. at *2 (citing *Sierra l* , 73 F.3d at 572). Where an expert "had not yet had a chance [to] revise and supplement his own opinions with the benefit of deposition testimony" of Defendants' witness, supplementation is "substantially justified." *illegas*, 2017 WL 816872, at *4.

IV. ARGUMENT

A. If the Court Were to Deny Music Choice's Motion, Service of Dr. Russ's Su lemental Re ort ould e ot A ro riate and Ne essary In Order to Allow Music Choice to Respond to Dr. Shamos's Untimely New Opinions.

If Music Choice's Motion is denied and Dr. Shamos is permitted to express his untimely new opinions at trial, then Dr. Russ's Supplemental Report is proper rebuttal to those opinions.

In particular, as detailed in Music Choice's *a ert* motion, Dr. Shamos presented two new opinions on the infringement and validity of the '245 patent. First, Dr. Shamos offered a new non-infringement opinion that [redacted]

[redacted]

Dr. Russ's Supplemental Report addresses both of these new arguments in turn. First, in response to Dr. Shamos's new non-infringement position, Dr. Russ opines: (1) there is no evidence to support Dr. Shamos's opinion that [redacted], (2) Dr. Shamos's argument assumes an improper and belated claim construction for the term "transmitting" that is contrary to the intrinsic record, and (3) even under Dr. Shamos's new claim construction, Stingray infringes the asserted claims of the '245 patent, either literally or under the doctrine of equivalents. Ex. A, ¶¶ 13-30.

Refuting Dr. Shamos's new invalidity argument, Dr. Russ further opines that (1) the Rothman reference does not disclose MP4 technology or MPEG-encoded video formats generally, (2) a POSITA would not make the leap to MP4 technology based on a reference to MP3 like the one in Rothman, and (3) even if the use of MP4 were obvious in view of the disclosures of Rothman, which it is not, that would still be insufficient to invalidate claims 10 and 15 of the '245 patent. Ex. A, ¶¶ 31-39.

Because Dr. Shamos did not express his new non-infringement and invalidity opinions until his deposition, which was "*after* the deadline for expert disclosures," it would have been impossible for Dr. Russ to have formed and delivered his responsive opinions in his Infringement or Validity Reports. *illegas*, 2017 WL 816872, at *4 (emphasis original). Moreover, Dr. Russ's core opening opinions, *i.e.*, that Stingray's [redacted]

infringes claims 10 and 15 of the '245 patent, and that the claims are not invalid in view of Rothman, remain unchanged by his Supplemental Report.

With regards to Dr. Shamos's new non-infringement argument, which is based on a new construction of the term "transmitting," Music Choice would have had a right to amend its infringement contentions responsive to this new construction if Stingray had timely identified it during claim construction and the Court had ruled in Stingray's favor. *See* P.R. 3.6(a)(1) ("If a party claiming patent infringement believes in good faith that the Court's Claim Construction Ruling so requires, not later than 30 days after service by the Court of its Claim Construction Ruling, that party may serve 'Amended Infringement Contentions' without leave of court…"). Stingray did not ask the Court to construe "transmitting" or "transmit" as they appear in claims 10 and 15 of the '245 patent during the claim construction process, or at any point prior to Dr. Shamos's deposition.

Thus, Dr. Russ did not previously have an opportunity to address Dr. Shamos's new arguments, and his Supplemental Report is appropriate under Rule 26.

. Dr. Russ's Su lemental Re ort ould e Pro er under t e *Sierra Club* Fa tors e ause t e Testimony is Im ortant, Does Not Pre udi e Stingray, and Res onds to Dr. Shamos's Previously Undis losed O inions.

In the event Dr. Shamos is permitted to testify at trial regarding his untimely new opinions, Dr. Russ's Supplemental Report would be both substantially justified and harmless in view of the four *Sierra l* factors, *i.e.*, (1) the importance of the testimony; (2) the prejudice to the opposing party of allowing the witness to testify; (3) the possibility of curing any such prejudice by a continuance; and (4) the explanation, if any, for the party's failure to comply with the discovery order or rules. *See* 73 F.3d at 572.

First, Dr. Russ's supplemental opinions are important, as this is Music Choice's only opportunity to address Dr. Shamos's new opinions prior to trial. If Dr. Shamos is permitted to offer his untimely opinions to the jury, Dr. Russ should be permitted to respond.

Second, there is no prejudice to Stingray. Dr. Russ's report is brief and limited to his responses to Dr. Shamos's new opinions. Music Choice seeks leave to supplement only in the event the Court permits Dr. Shamos's untimely and previously undisclosed opinions. If the Court grants this motion, Stingray cannot claim prejudice because Dr. Shamos will also be permitted to present his new opinions at trial.

Third, a continuance is not necessary and will not resolve the issue because trial is more than four months away. Stingray does not need additional time "to adapt their own case," because it is in fact Music Choice who is adapting its case by responding to Stingray's new non-infringement and invalidity arguments. *ra ley . S*, 866 F.2d 120, 125 (5th Cir. 1989).

Finally, Music Choice has good cause for the timing of Dr. Russ's Supplemental Report; Stingray did not disclose its new opinions until Dr. Shamos's deposition, nearly two years *after* Dr. Russ served his Infringement and Validity Reports. Dr. Russ's Supplemental Report is "substantially justified" because it would have been impossible for him to respond to Dr. Shamos's previously undisclosed opinions. *illegas*, 2017 WL 816872, at *4.

V. CONCLUSION

For the foregoing reasons, Music Choice respectfully requests the Court to grant its Motion for Leave to Serve the Supplemental Expert Report of Dr. Russ.

Date: July 25, 2019

Respectfully submitted,

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By: *s artin . lac*

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Page 1766 of 1912 (IPR2025-00350)
Stingray Group Inc. et al v. Hernandez-Mondragon

CERTIFICATE OF AUTHORI ATION TO FILE UNDER SEAL

I certify that the foregoing document and attachments thereto are authorized to be filed under seal pursuant to the Protective Order entered in this case.

s artin . lac
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CERTIFICATE OF CONFERENCE

Per Local Rule CV-7(h)-(i), counsel for Music Choice and counsel for Stingray conferred via e-mail on July 24, 2019. The parties also conferred by telephone on July 25, 2019, in which Nisha Patel participated on behalf of Music Choice and Vimal Kapadia participated on behalf of Defendants. Despite good faith efforts, the parties did not reach an agreement regarding Music Choice's Motion for Leave to Serve the Supplemental Expert Report of Samuel Russ, Ph.D. Defendants have indicated that they are opposed to this motion.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing documents were served on the following counsel of record via electronic mail on July 25, 2019.

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

MUSIC CHOICE,

Plaintiff,

v.

STINGRAY DIGITAL INC. (f/k/a STINGRAY DIGITAL GROUP INC.) and STINGRAY MUSIC USA, INC.,

Defendants.

Civil Action No. 2:16-CV-0586-JRG-RSP

LEAD CASE

Jury Trial Demanded

[redacted]

MUSIC CHOICE'S DAUBERT MOTION TO STRIKE DEPOSITION TESTIMONY OF DEFENDANTS' EXPERT, DR. MICHAEL SHAMOS, FOR PRESENTING UNTIMELY AND UNDISCLOSED OPINIONS

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. FACTUAL BACKGROUND 1

III. LEGAL STANDARD 3

IV. DEFENDANTS SHOULD BE PRECLUDED FROM RELYING UPON DR. SHAMOS'S UNTIMELY NON-INFRINGEMENT AND INVALIDITY OPINIONS RELATING TO THE '245 PATENT 5

A. Dr. Shamos's Deposition Testimony Violates Rule 26 5

B. Defendants Cannot Justify Dr. Shamos's Late Deposition Testimony 7

V. CONCLUSION 7

INDEX OF ABBREVIATIONS

ABBREVIATION	REFERENCE
’025 patent	U.S. Patent No. 7,320,025
’045 patent	U.S. Patent No. 9,351,045
’245 patent	U.S. Patent No. 9,357,245
Banks Decl.	Declaration of Ryan Banks in Support of Music Choice’s Daubert Motion to Strike Deposition Testimony of Defendants’ Expert, Dr. Michael Shamos, for Presenting Untimely and Undisclosed Opinions
Ex. __	The corresponding exhibit attached to the Banks Decl.
IPR	*Inter partes* review
Mackintosh	U.S. Patent No. 6,317,784 to Mackintosh
Patents in Suit	The ’025, ’045 and ’245 patents
PTAB	United States Patent and Trademark Appeals Board
PTO	United States Patent and Trademark Office
Rothman	U.S. Patent Application Publication 2001/0044851 to Rothman
Shamos Dep. Tr.	Deposition Transcript of Michael Shamos, Ph.D. dated May 1, 2019
Shamos Invalidity Report	Rebuttal Report of Michael Shamos, Ph.D. Regarding Non-Infringement
Shamos Non-Infringement Report	Invalidity Report of Michael Shamos, Ph.D.
§ 103	35 U.S.C. § 103

TABLE OF AUTHORITIES

Page(s)

Cases

Barrett v. Atlantic Richfield Co.,
95 F.3d 375 (5th Cir. 1996) 4

Effective Expl., LLC v. BlueStone Nat. Res. II, LLC,
2017 WL 5895164 (E.D. Tex. Nov. 13, 2017) 4, 7

Geiserman v. MacDonald,
893 F.2d 787 (5th Cir. 1990) 4

Hill v. Koppers Indus.,
2009 WL 3246630 (N.D. Miss. Sept. 30, 2009) 3, 4, 7

Koenig v. Beekmans,
2018 WL 297616 (W.D. Tex. Jan. 4, 2018) 3

Valenzuela v. City of Haltom City,
2012 WL 13024705 (N.D. Tex. Jan. 31, 2012) 3, 4

Other Authorities

Fed. R. Civ. P. 26 ..... *passim*

Fed. R. Civ. P. 37(c) 4

Fed. R. Civ. P. 26 16(b) 4

I. INTRODUCTION

Plaintiff Music Choice moves to strike and exclude portions of Dr. Michael Shamos's deposition testimony that improperly offer non-infringement and invalidity opinions that were not timely disclosed by Defendants prior to the Court's expert designation deadlines, which passed nearly two years ago. Dr. Shamos's deposition testimony violates Rule 26, which requires that an expert submit a report having "a ***complete*** statement of all opinions the witness will express and the basis and reasons for them." Fed. R. Civ. P. 26(a)(2)(emphasis added). Defendants cannot justify their delayed disclosure because Dr. Shamos's new opinions are based on information that has been in Defendants' possession for years, and the prejudice to Music Choice is incurable.[1]

II. FACTUAL BACKGROUND

1. Music Choice commenced this action on June 6, 2016, asserting claims for, among other things, infringement of the Patents in Suit. Dkt. 1. Music Choice filed its Third Amended Complaint on March 17, 2017. Dkt. 84. The currently asserted claims of the Patents in Suit are the following: claim 8 of the '025 Patent, claims 16, 17, 19 and 20 of the '045 Patent, and claims 10 and 15 of the '245 Patent. Banks Decl., ¶ 3.

2. On November 28, 2016, Defendants served their initial invalidity contentions. Ex. A. On April 13, 2017, Defendants served amended invalidity contentions. Ex. B.

3. In accordance with the Court's Docket Control Order, the parties served disclosures for opening expert witnesses on September 27, 2017 and disclosures for rebuttal expert witnesses on October 17, 2017. Dkt. 151.

4. On September 27, 2017, Defendants served the Shamos Invalidity Report which

[1] In the event the Court denies the present motion, Music Choice reserves its right to seek leave of Court to supplement its expert reports to respond to Dr. Shamos's new theories.

included Dr. Shamos's opinions on the alleged invalidity of the '245 Patent. Banks Decl. ¶ 4. He opined, *inter alia*, that asserted claims 10 and 15 of the '245 Patent are rendered obvious by the Rothman prior art reference, either alone or in combination with the Mackintosh reference. *See, e.g.*, Ex. C at ¶ 280.

5. On October 17, 2017, Defendants served Dr. Shamos's Non-Infringement Report, which included, *inter alia*, his opinions on Defendants' alleged non-infringement of the '245 patent. Banks Decl. ¶ 5. This expert report included [redacted] Ex. D at ¶¶ 62, 63, Ex. B at 47-62.

6. Shortly thereafter, the Court granted Defendants' motion to stay the litigation pending completion of IPR proceedings filed by Defendants before the PTAB. *See* Dkt. 164, 168, 171. Upon resolution of those IPR proceedings, the Court lifted the stay. *See* Dkt. 174.

7. Music Choice deposed Dr. Shamos on May 1, 2019. During the deposition, and for the first time, Dr. Shamos offered a new non-infringement opinion [redacted]

8. [redacted]

[redacted]

9. Moreover, during his deposition, Dr. Shamos expressed, again for the first time, a new invalidity opinion [redacted]

11. Since Dr. Shamos's May 1 deposition, Defendants have neither supplemented, nor sought leave of Court to supplement, Dr. Shamos's expert reports to include these new opinions.

III. LEGAL STANDARD

The Federal Rules require an expert to submit a signed report—by the party's expert designation deadline—that contains, *inter alia*, "a ***complete*** statement of all opinions the witness will express and ***the basis and reasons for them***." Fed. R. Civ. P. 26(a)(2)(emphasis added). "The purpose of Rule 26(a)(2) is to provide notice to opposing counsel before the deposition as to what the expert witness will testify…" *Hill v. Koppers Indus.*, 2009 WL 3246630, at *2 (N.D. Miss. Sept. 30, 2009) (quoting *Ciomber v. Cooperative Plus, Inc.*, 527 F.3d 635, 642 (7th Cir. 2008)). This rule "does ***not*** allow parties to cure deficient expert reports by supplementing them with later deposition testimony." *Hill*, 2009 WL 3246630, at *2 (emphasis added); *Koenig v. Beekmans*, 2018 WL 297616, at *3 (W.D. Tex. Jan. 4, 2018); *Valenzuela v. City of Haltom City*, 2012 WL

13024705, at *2 (N.D. Tex. Jan. 31, 2012). "Rather, only a timely filed supplemental report that comports with Rule 26(a)(2) can supplement an original expert report." *Id.* at *3. The purpose of these disclosure requirements is to "eliminate unfair surprise to the opposing party." *Id.* (citing *Muldrow ex rel. Estate of Muldrow v. Re-Direct, Inc.*, 493 F.3d 160, 167 (D.C. Cir. 2007)); *Effective Expl., LLC v. BlueStone Nat. Res. II, LLC*, 2017 WL 5895164, at *3 (E.D. Tex. Nov. 13, 2017) ("the two primary purposes of Rule 26(a)(2)(B)—to provide notice to opposing counsel of the expert's proposed testimony and to minimize the need for expert depositions").

A party cannot use information that it fails to provide as required by Rule 26(a) "to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless." Fed. R. Civ. P. 37(c). To determine whether to strike expert testimony, the Fifth Circuit considers the following four factors: "(1) the explanation, if any, for the party's failure to comply with the . . . order; (2) the prejudice to the opposing party of allowing the witness to testify; (3) the possibility of curing such prejudice by granting a continuance; and (4) the importance of the witnesses' testimony." *Barrett v. Atlantic Richfield Co.*, 95 F.3d 375, 380 (5th Cir. 1996).

A failure to provide a complete statement of expert opinions by the appropriate deadline is not harmless or justified when the expert proffers new opinions during his deposition which is taken after the expert designation deadline. *Hill*, 2009 WL 3246630, at *3; *Effective Expl., LLC,* 2017 WL 5895164, at *3 (explaining that an expert's deposition testimony relying on publications not included in his report was a violation of Rule 26 and was "not substantially justified or harmless"). Moreover, Rule 16(b) "authorizes the district court to control and expedite pretrial discovery through a scheduling order" and gives the court "broad discretion to preserve the integrity and purpose of the pretrial order," including the exclusion of evidence to enforce the pretrial order. *Geiserman v. MacDonald*, 893 F.2d 787, 790 (5th Cir. 1990).

IV. DEFENDANTS SHOULD BE PRECLUDED FROM RELYING UPON DR. SHAMOS'S UNTIMELY NON-INFRINGEMENT AND INVALIDITY OPINIONS RELATING TO THE '245 PATENT

A. Dr. Shamos's Deposition Testimony Violates Rule 26

The Court's Docket Control Order set deadlines for expert disclosures. Dkt. 151. Specifically, the parties were ordered to exchange opening expert reports by September 27, 2017 and rebuttal expert reports by October 17, 2017. *Id*. Despite these deadlines, Dr. Shamos proffered new technical opinions at his recent deposition—years after the Court-imposed deadlines. As discussed below, Dr. Shamos's new theories do not appear in his opening or rebuttal reports, but directly impact Defendants' non-infringement and invalidity positions relating to the '245 Patent and are thus in violation of Rule 26(a)(2).

New Theory # 1: [redacted] During his deposition, Dr. Shamos testified, for the first time, [redacted]

[redacted]

New Theory # 2: [redacted]

Dr. Shamos also offered, for the first time, the new invalidity opinion [redacted]

Because Dr. Shamos's deposition testimony deviated from the written opinions he provided nearly two years ago, his testimony at trial should be limited to the opinions that were

[2] In relevant part, the Shamos Non-Infringement Report cites only to 07/18/17 Lavigne Dep. Tr. at 106:24-107:8, 124:4-8, 150:21-151:2 and 09/20/17 Lavigne Dep. Tr. at 234:2-235:1. *See* Ex. D at Ex. B, p. 51. [redacted]

timely disclosed in the Shamos Non-Infringement and Invalidity Reports.

B. Defendants Cannot Justify Dr. Shamos's Late Deposition Testimony.

Defendants cannot show that the untimely disclosure of these new technical opinions was either justified or harmless. Defendants have no explanation for Dr. Shamos's untimely disclosure regarding the operation of [redacted] because Defendants had access to all relevant information well in advance of the expert disclosure deadlines. None of Dr. Shamos's new opinions rely on Music Choice's knowledge or documents, but instead, are based on documents and information in Defendants' control and possession, *e.g.*, Defendants' witness testimony, documents, and source code relating to the operation of its own [redacted] and Defendants' chosen prior art references. Unsurprisingly, Defendants have yet to identify a valid reason for their late disclosure.

Music Choice will be unfairly prejudiced if Defendants are allowed to rely upon Dr. Shamos's untimely opinions. The Court in *Hill* reasoned that the purpose of Rule 26(a)(2) is to "allow[] the opposing party to have all the relevant information in a timely fashion so that the opposing party may prepare to cross-examine the expert during his or her deposition." *Hill*, 2009 WL 3246630, at *3; *see also Effective Expl., LLC,* 2017 WL 5895164, at *3. By providing inadequate expert disclosures, Defendants limited Music Choice's ability to fully prepare and take Dr. Shamos's deposition, and Music Choice now cannot be fully prepared at trial to impeach Dr. Shamos if it does not know what is coming.[3]

V. CONCLUSION

For all of these reasons, Music Choice respectfully requests that this Court grant Music

[3] As is noted above (*supra* n.1), in the event the Court were to deny the present motion and allow Dr. Shamos to express his new opinions at trial, it should grant Music Choice leave to supplement its expert reports to respond to those new theories.

Choice's motion, and that it strike Dr. Shamos's untimely deposition testimony and preclude him from expressing his new opinions at trial.

Date: May 31, 2019

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CERTIFICATE OF CONFERENCE

Per Local Rule CV-7(h)-(i), counsel for Music Choice and counsel for Stingray conferred via teleconference on May 31, 2019. Robert D. Rhoad, Collin M. Maloney, Joseph M. Abraham, and Nisha Patel participated on behalf of Music Choice. Elana Araj and Julie Bookbinder participated on behalf of Stingray. Despite good faith efforts, no agreement regarding Music Choice's motion to exclude could be reached, and the parties ended in an impasse. Stingray has indicated that it is opposed to this motion.

/s/ Martin J. Black
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CERTIFICATE OF AUTHORIZATION TO FILE UNDER SEAL

I certify that the foregoing document and attachments thereto are authorized to be filed under seal pursuant to the Protective Order entered in this case.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing documents were served on the following counsel of record via electronic mail on May 31, 2019.

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

MUSIC CHOICE, Plaintiff, v. STINGRAY GROUP INC. (f/k/a STINGRAY DIGITAL GROUP INC.) and STINGRAY MUSIC USA, INC., Defendants.	§ § § § § § § § § § §	C.A. No: 2:16-cv-00586-JRG-RSP (Lead Case) [redacted]

STINGRAY'S MOTION FOR SUMMARY JUDGMENT ON MUSIC CHOICE'S BREACH OF CONTRACT COUNTERCLAIM

TABLE OF CONTENTS

I. INTRODUCTION 1
II. ISSUE PRESENTED 1
III. STATEMENT OF UNDISPUTED MATERIAL FACTS 1
A. Procedural History 1
B. Music Choice's Counterclaim 2
IV. ARGUMENT 3
A. Legal Standards 3
B. Music Choice Has Failed To Identify Any Evidence Of Damage Resulting From Stingray's Alleged Breach Of Contract 5
V. CONCLUSION 6

TABLE OF AUTHORITIES

Page(s)

Cases

Alcatel USA, Inc. v. Cisco Sys.,
239 F. Supp. 2d 660 (E.D. Tex. 2002).....5

Celotex Corp. v. Catrett,
477 U.S. 317 (1986).....4

Cipriano v. Glen Cove Lodge #1458, B.P.O.E.,
1 N.Y.3d 53 (N.Y. 2003).....4

CreditSights, Inc. v. Ciasullo,
2008 U.S. Dist. LEXIS 91481 (S.D.N.Y. Sept. 5, 2008).....4

Florida Dep't of Ins. v. Chase Bank of Tex. Nat'l Ass'n,
2001 U.S. Dist. LEXIS 1250 (N.D. Tex. 2001).....5

Int'l Asso. of Machinists & Aerospace Workers, Lodge No. 2504 v. Intercontinental Mfg. Co.,
812 F.2d 219 (5th Cir. 1987).....4

Kareem v. Am. Home Mortg. Servicing, Inc.,
479 Fed. Appx. 619 (5th Cir. 2012).....5

State Farm Gen. Ins. Co. v. Nguyen,
1996 U.S. Dist. LEXIS 5240 (E.D. Tex. Mar. 25, 1996).....4

Other Authorities

Fed. R. Civ. P. 56.....1, 3, 4

I. INTRODUCTION

Pursuant to Fed. R. Civ. P. 56, Defendants / Consolidated Plaintiffs Stingray Group Inc. (f/k/a Stingray Digital Group Inc.) and Stingray Music USA, Inc. (collectively, "Stingray") respectfully move for summary judgment on the breach of contract counterclaim asserted by Plaintiff / Consolidated Defendant Music Choice. Music Choice has failed to adduce any evidence of damages resulting from Stingray's alleged breach – a required element of Music Choice's counterclaim.

Music Choice alleges that Stingray breached confidentiality agreements entered into between the parties in 2013 and 2016. As a result of Stingray's alleged breach, Music Choice seeks both injunctive relief in the form of specific performance by Stingray, as well as compensatory and punitive damages. However, Music Choice has not quantified the monetary damages it seeks, nor has Music Choice identified how it has been injured by Stingray's alleged breach. Therefore, Music Choice cannot satisfy its burden of proving damages, an essential element of its counterclaim, and Stingray is entitled to summary judgment.

II. ISSUE PRESENTED

1. Whether there is sufficient evidence in the record for the trier of fact to conclude that Music Choice was damaged by any alleged breach of confidentiality agreements?

III. STATEMENT OF UNDISPUTED MATERIAL FACTS

A. Procedural History

In 2016, Stingray filed suit against Music Choice asserting five business tort claims arising out of Music Choice's predatory and illegal business practices. *See* Dkt. Nos. 1, 15 (2:16-cv-00964-JRG-RSP). On March 16, 2017, the Court granted Stingray's motion to consolidate its action with Music Choice's already pending action for patent infringement, at least through the pretrial conference. Dkt. No. 42 (2:16-cv-00964-JRG-RSP). Thereafter, Music Choice asserted a

counterclaim against Stingray for breach of contract under New York law. *See* Dkt. Nos. 90, 156 (2:16-cv-00586-JRG-RSP). Music Choice brought two separate motions to dismiss Stingray's business tort claims – which were both denied (Dkt. Nos. 46, 48 (2:16-cv-00964-JRG-RSP)). The parties engaged in fact discovery through September 2017. Dkt. No. 151 (2:16-cv-00586-JRG-RSP).[1]

After the parties exchanged expert reports, but before expert depositions commenced, the Court granted Stingray's motions to adjourn the trial and to stay the consolidated actions pending the outcome of *inter partes* review proceedings of the asserted patents. Dkt. Nos. 167, 168, 171. The stay was lifted in November 2018, after which the parties engaged in limited supplemental discovery relating to damages, and completed expert depositions. *See* Dkt. Nos. 173-174. Trial is currently set for August 19, 2019. However, Stingray has filed an unopposed motion to continue the trial date due to scheduling conflicts. Dkt. No. 183.

B. Music Choice's Counterclaim

In its First Amended Answer and Counterclaims, Music Choice contends that Stingray breached confidentiality agreements entered into between the parties in relation to a potential acquisition by Stingray of Music Choice. Dkt. No. 156, ¶¶ 17-20, 61; Dkt. Nos. 90-1 – 90-3; *see also*, Ex. 1, Dep. Tr. of David Del Beccaro (Sept. 12, 2017), 74:12-75:2, 107:1-6; Ex. 2, Dep. Tr. of Eric Boyko (Sept. 8, 2017), 182:17-184:5, 188:12-14.[2] In its Counterclaims, Music Choice

[1] All docket citations post-dating the Court's September 28, 2017 Order adopting the Magistrate's Report and Recommendations denying Music Choice's motion to dismiss Stingray's First Amended Complaint are to the lead case, 2:16-cv-00586-JRG-RSP.

[2] Unless otherwise indicated, all Exhibits are attached to the Declaration of Joshua L. Raskin In Support of Stingray's Motion For Summary Judgment on Music Choice's Breach of Contract Counterclaim.

alleges the following regarding the damages sustained as a result of Stingray's alleged breach of contract:

> As a result of Stingray's actions, Music Choice has suffered and continues to suffer substantial injury. Music Choice has suffered damages, including at least the loss of potential business as a direct and proximate result of Stingray's breach of the Confidentiality Agreements. Music Choice has also suffered harm as a result of the public disclosure of information in violation of the terms of the Confidentiality Agreements. . . . Music Choice has suffered and continues to suffer irreparable injury due to Stingray's breach of the Confidentiality Agreements, and Stingray's actions should be enjoined.

Dkt. No. 156, ¶¶ 64-66. During discovery, Music Choice designated its President and Chief Executive Officer, David Del Beccaro, as its Rule 30(b)(6) corporate witness to testify regarding those allegations. *See* Ex. 3, Defendants' First Notice of Deposition of Plaintiff Music Choice, at Topic Nos. 107-109; Ex 4, July 10, 2017 D. McCallum email. Music Choice also designated its General Counsel, Paula Calhoun, as its Rule 30(b)(6) corporate witness to testify regarding Stingray's alleged breach of the confidentiality agreements. *See* Ex. 3, Defendants' First Notice of Deposition of Plaintiff Music Choice, at Topic Nos. 101-106; Ex 4, July 10, 2017 D. McCallum email; Ex 5, Dep. Tr. of Paula Calhoun (Aug. 31, 2017), 23:10-25:2. Neither Mr. Del Beccaro nor Ms. Calhoun, however, identified any evidence of injury to Music Choice resulting from Stingray's alleged breach. Nor has Music Choice identified any other evidence of damage during discovery in this case.

IV. ARGUMENT

A. Legal Standards

Rule 56(c) of the Federal Rules of Civil Procedure mandates the entry of summary judgment against a party who, after adequate time for discovery and upon motion, "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on

which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett,* 477 U.S. 317, 322 (1986); Fed. R. Civ. P. 56(c). There can be no "genuine issue of material fact" absent such a showing, because "a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." *Celotex,* 477 U.S. at 323. The party opposing summary judgment cannot satisfy its burden to "come forward with competent summary judgment proof showing the existence of a genuine fact issue . . . by 'conclusory allegations,' by 'unsubstantiated allegations,' by 'unsubstantiated assertions,' or by only a 'scintilla' of evidence." *State Farm Gen. Ins. Co. v. Nguyen*, 1996 U.S. Dist. LEXIS 5240, at *5 (E.D. Tex. Mar. 25, 1996) (citing *Lujan v. National Wildlife Fed'n*, 497 U.S. 871, 871-873 (1990); *Hopper v. Frank*, 16 F.3d 92 (5th Cir. 1994); *Davis v. Chevron, U.S.A., Inc.*, 14 F.3d 1082 (5th Cir. 1994)). Unless the nonmoving party makes a sufficient evidentiary showing as to each essential element of its case with respect to which it has the burden of proof, the movant is entitled to judgment as a matter of law. *Int'l Asso. of Machinists & Aerospace Workers, Lodge No. 2504 v. Intercontinental Mfg. Co.*, 812 F.2d 219, 222 (5th Cir. 1987).

The confidentiality agreements at issue provide that they are governed by New York law. *See, e.g.*, Dkt. No. 90-1 at 4. "In New York, a claim for breach of contract must allege: (1) existence of a contract; (2) the claimant has performed his or her obligations under the contract; (3) the defendant failed to perform his or her obligations there under; and (4) **damages resulted to the plaintiff**." *CreditSights, Inc. v. Ciasullo*, 2008 U.S. Dist. LEXIS 91481, at *30-31 (S.D.N.Y. Sept. 5, 2008) (emphasis added). Indeed, even where a party seeks equitable relief in the form of specific performance as a remedy for breach of contract, injury must be shown. *See Cipriano v. Glen Cove Lodge #1458, B.P.O.E.*, 1 N.Y.3d 53, 62 (N.Y. 2003) (finding that where

defendant "caused no appreciable injury" to plaintiff, "no damages can flow from its breach," and declining to award damages or order specific performance).

B. Music Choice Has Failed To Identify Any Evidence Of Damage Resulting From Stingray's Alleged Breach Of Contract

It is well-established that, to survive a motion for summary judgment, a non-movant must identify evidence that at least raises a genuine issue of fact regarding each essential element of the non-movant's claim. *Kareem v. Am. Home Mortg. Servicing, Inc.,* 479 Fed. Appx. 619, 620 (5th Cir. 2012) (dismissing claim on summary judgment including for failure to provide evidence of damages); *see Alcatel USA, Inc. v. Cisco Sys.*, 239 F. Supp. 2d 660, 673 (E.D. Tex. 2002) (granting summary judgment motion for lack of remedy in trade secret case where non-movant "failed to meet its burden of presenting sufficient evidence demonstrating a triable issue of material fact as to actual damages recoverable under a valid legal theory"). In this case, Music Choice and its corporate representatives have not identified any evidence demonstrating that it suffered damage or was otherwise injured by Stingray's alleged breach of the 2013 and 2016 confidentiality agreements – an essential element of Music Choice's breach of contract counterclaim. Music Choice also did not provide any expert opinions in support of its counterclaim. Instead, Music Choice makes only unsupported, conclusory allegations of unquantified injury and loss of potential business.

By demonstrating that Music Choice has not come forth with a sufficient factual basis to support its damages claims, Stingray has met its summary judgment burden, and Music Choice's counterclaim should be dismissed. *See Florida Dep't of Ins. v. Chase Bank of Tex. Nat'l Ass'n*, 2001 U.S. Dist. LEXIS 1250, at *29 (N.D. Tex. 2001) (granting defendant's summary judgment motion where plaintiff "produced no evidence of causation and damages, and because it has established no legal or factual basis for its 'liquidated damages' theory").

V. CONCLUSION

For the reasons outlined above, Stingray respectfully requests that the Court grant its motion for summary judgment dismissing Music Choice's breach of contract counterclaim.

Dated: May 31, 2019

Respectfully submitted,

GREENBERG TRAURIG, LLP

/s/ *Joshua L. Raskin*

Joshua L. Raskin (NY Bar # 2816783)
Allan A. Kassenoff (NY Bar # 2964575)
GREENBERG TRAURIG, LLP
200 Park Avenue
New York, NY 10166
Telephone: 212-801-9200
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Mary-Olga Lovett (TX Bar # 00789289)
GREENBERG TRAURIG, LLP
1000 Louisiana, Suite 1700
Houston, TX 77002
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Facsimile: 713-754-7541
Email: LovettM@gtlaw.com

ATTORNEYS FOR DEFENDANTS STINGRAY DIGITAL GROUP INC. AND STINGRAY MUSIC USA, INC.

CERTIFICATE OF SERVICE

The undersigned certifies that on this 31st day of May 2019, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document by electronic mail under Local Rule CV-5(d).

/s/ Joshua L. Raskin
Joshua L. Raskin

CERTIFICATE OF AUTHORIZATION TO FILE UNDER SEAL

Pursuant to Local Rule 5(a)(7)(A), the undersigned hereby certifies that the corresponding documents were filed under seal pursuant to the Court's First Amended Stipulated Protective Order (Dkt. No. 132).

/s/ Joshua L. Raskin
Joshua L. Raskin

EXHIBIT 19

MUTUAL NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (the "Agreement"), dated as of September 15, 2017 is between Stingray Digital Group Inc. and EGLA Communications.

STATEMENT OF PURPOSE:

The parties are considering entering into a business relationship and are in discussions with respect to such relationship (the "**Purpose**").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Definitions**. For the purposes of this Agreement, the term "**Owner**" shall refer to the party disclosing information and the term "**Recipient**" shall refer to the party receiving such information and each will include any person or entity that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with Owner or Recipient, as the case may be, and any of Owner's or Recipient's Representatives as well as any of their employees, officers, directors, shareholders, attorneys, accountants or other agents or representatives. The term "**Representative**" will include any employee, officer, director, shareholder, attorney, accountant or other agent or representative of the party.

2. **Confidential Information.** The term "**Confidential Information**" as used herein will mean all confidential and proprietary information disclosed by Owner to the Recipient, whether owned by Owner or third parties, including, without limitation, this Agreement, technical information, current and future product features and development plans, customer lists, employee lists and pay rates, contracts, current and planned business relationships, price lists, costing information, operating procedures, business plans, financial information, production technologies, marketing and sales plans and methods, research data, documents, formulas, designs, specifications, protocols, process information, know-how, uses, enhancements, modifications, variations, extensions, discoveries, analysis, compilations, reports, studies, test results, software (including source code) and other information (whether or not patentable and whether or not marked as confidential) and creative concepts and strategies owned, possessed or used by Owner.

3. **Non-disclosure**.

(a) Recipient will not use the Confidential Information received from or on behalf of the Owner except for the Purpose. Recipient will not disclose (directly or indirectly) Confidential Information to any person (except on a confidential basis to its Representatives who need to know and who are legally obligated to preserve the confidentiality thereof). Recipient will employ reasonable steps to preserve the confidentiality of the Confidential Information, and will, in any event, employ the same practices used to protect its own Confidential Information of similar nature. Recipient will be responsible for any breach of this Agreement due to any act or omission by its Representatives. Upon request at any time, Recipient will promptly return to

Owner any Confidential Information (including any and all copies of any such Confidential Information) in its possession, or certify that it has been destroyed.

(b) Recipient agrees that the obligations imposed hereunder will apply to all Confidential Information, except where such Confidential Information: (i) is or becomes public knowledge or publicly available to Recipient through no fault of Recipient; (ii) is learned by Recipient from a third party entitled to disclose it, and the facts and circumstances of such disclosure by such third party to Recipient are documented in evidence that can be presented to Owner; (iii) was already known to Recipient as shown by prior written records; (iv) is shown by Recipient to have been independently developed by Recipient prior to the date hereof as evidenced by written records; or (v) is or becomes publicly available as a result of issuance of a patent or publication of a foreign pending patent application.

(c) Notwithstanding any other term of this Agreement, Recipient may disclose such Confidential Information as required by court order or other lawful process. In all such cases, Recipient will disclose Confidential Information only to the extent required to fulfill such purpose or legal requirement. In the event Recipient becomes legally compelled to disclose any Confidential Information, Recipient will promptly notify Owner of such fact so that Owner may seek an appropriate remedy to prevent such production, and request the person demanding such production to allow the Owner a reasonable period of time to seek such remedy.

4. **Third-Party Misappropriation**. Recipient will immediately report to Owner any unauthorized attempt by any person of which Recipient has knowledge (a) to use or disclose Confidential Information, or (b) to copy, duplicate, distribute, disassemble, reverse compile, reverse engineer, modify, record, or otherwise reproduce any part of the Confidential Information.

5. **No License.** Nothing in this Agreement is intended to grant any rights or license under any patent or copyright, trademark, service mark, trade name, trade secret, software or any other intellectual property right of Owner to the Recipient nor shall this Agreement grant the Recipient any rights in or to the Confidential Information.

6. **No Representations or Warranties**. None of the Confidential Information or accompanying information which may be disclosed by Owner will constitute any representation, warranty, assurance, guarantee, or inducement by Owner as to the non-infringement of patents, trademarks, copyrights, or any intellectual property rights or other rights of third persons. Disclosure by Owner of Confidential Information does not constitute a warranty that the Confidential Information is accurate, complete, or adequate for the purposes contemplated by Recipient.

7. **Non-Solicitation of Employees.** Recipient hereby agrees that during the term hereof and for twelve (12) months thereafter, Recipient shall not directly or indirectly hire any employees of or consultants to Owner nor shall Recipient solicit or induce or attempt to induce any persons who are employees of or consultants to Owner at the time of such termination or

during the ninety (90) days immediately preceding such termination, to terminate their relationship or consulting agreement with Owner.

8. **Return of Materials**. Upon the earlier of (i) a written request at any time by Owner or (ii) termination of this Agreement, all Confidential Information, together with any copies thereof in any media, shall be returned by Recipient to Owner or destroyed, and Recipient shall make no further use of the Confidential Information and shall promptly certify in writing to Owner that it has complied with these obligations. The return of any Confidential Information will not relieve Recipient of its obligation to maintain the confidentiality of the Confidential Information in accordance with the terms hereof.

9. **Injunctive Relief**. Recipient acknowledges that any violation by Recipient or Recipient's Representatives of this Agreement would result in damage to Owner that is largely intangible but nonetheless real, and that is incapable of complete remedy by an award of damages. Accordingly, any such violation will give Owner the right to a court-ordered injunction (including, provisional, interim, temporary and interlocutory) or other appropriate order to specifically enforce those covenants. Recipient agrees to pay Owner as damages any reasonable expenses, including, but not limited to reasonable attorneys' fees, incurred in obtaining such specific enforcement (in addition to any other damages or relief to which Owner may be entitled).

10. **Termination**. This Agreement will be effective on and as of the date first set forth above and will (unless extended by mutual agreement in writing) terminate one (1) year from the last date that Confidential Information is provided to Recipient by or on behalf of the Owner.

11. **Effect**. Neither the execution and delivery of this Agreement nor the furnishing of Confidential Information will obligate either Recipient or Owner to enter into any further agreement or negotiation with the other or to refrain from entering into an agreement or negotiation with any third party.

12. **Miscellaneous.** This Agreement expresses the entire agreement between the parties hereto regarding the disclosure and use of Confidential Information, and supersedes any prior written or oral understanding or agreements. This Agreement may not be modified, amended, supplemented or waived except by a writing duly signed by the authorized officers of the parties hereto, and such writing must refer specifically to this Agreement. None of the rights, interests, or obligations created by this Agreement may be assigned, transferred, or delegated in whole or in part except upon the prior express written consent of the non-assigning party. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument, and this Agreement will be of no force and effect until it has been executed by all parties hereto. This Agreement will be construed and interpreted in accordance with the laws of the Province of Quebec without giving effect to the choice of law or conflict of laws principles thereof.

The parties declare having requested that this Agreement is drawn in the English language. Les parties déclarent avoir exigé que la présente entente soit rédigée en langue anglaise.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their names by their duly authorized officers as of the date first above written.

STINGRAY DIGITAL GROUP INC.

By: _____

Name: Lloyd Feldman

Title: SVP and General Counsel

EGLA COMMUNICATIONS

By: _____

Name: Edwin Hernandez Pho

Title: VP / CTO

EXHIBIT 20

Saturday, April 17, 2021 at 15:52:42 Eastern Daylight Time

Subject: Potential solution to Music Choice's Damages Report admitted by Judge with multi-million dollar exposure.
Date: Monday, November 11, 2019 at 11:01:27 AM Eastern Standard Time
From: Dr. Edwin A. Hernandez
To: Lloyd Feldman
CC: board@stingray.com, Alcides Hernandez
BCC: rosenm@gtlaw.com
Priority: High
Category: Emails
Attachments: image001.png, Offering to stingray non-infringing patents.pdf, dkt 280.pdf, 10123074 patent .pdf, Notice of Allowance - Cloud to Cable 2019.pdf

Dear Lloyd & Board of Directors of Stingray,

As you know, I have been tracking your case against MC and recent rulings have been adverse to Stingray, specially the denied motion to a Daubert challenge made to Dr. Ugone's multimillion dollar damages report. The judge stated that OSE1 is not a viable non-infringing alternative and Ugone's analysis is reliable. The bad news is that Dr. Ugnone's report will be presented to a jury on trial starting on Dec 9th. As you may recall, my patents create a visual complement feature to the music stream that is broadcasted to a Cable TV system in MPEG format and others, plus the same system can generate VOD streams that can be used for SVOD. The patent portfolio that I own contains 39 approved claims (see attachments "10123074 patent.pdf" and "Notice of allowance – Cloud to Cable 2019.pdf") covering precisely the visual complement feature, SVOD, plus a software & hardware implementation that has been tested in several cable TV systems.

Marketing Brochure: https://www.slideshare.net/edwinhm/cloud-to-cable-tv-licensing-opportunitiesd-to-cable-tv-licensing-opportunitiestv-intellectual-property-licensing/edwinhm/cloud-to-cable-tv-licensing-opportunitiesd-to-cable-tv-licensing-opportunitiestv-intellectual-property-licensing

I am not an attorney but I have been a technical expert witness for several patent & IP lawsuits and recently worked as a damages expert for another case in the E.D. of Texas . Besides that, my company, Mobility Workx, is scheduled to go to trial on patent infringement grounds against Verizon on Dec 2nd , in the E.D. of Texas in front of Judge Mazzant, as you can anticipate my own case is set to trial after fighting with experienced attorneys from Alston & Bird. Moreover, I have been assisting other tech companies in other patent cases & IP matters. I am also the inventor of now 12 issued patents including two, in the patent portfolio that I submitted for Stingray's review in July (attached "Offering to stingray….pdf").

A license to my portfolio offering would eliminate the validity of the **Panduit test that the court states as "Reliable"** which is discussed in Dkt # 280 (attached) and this is the reason why your exposure is now a **multi-million dollar liability** . It appears that Liberty and AT&T alone triggered $15.7M of exposure plus $7.4M loss profits with others (Pg. 9). On Pg. 7 of Dkt #280 the judge states that:

"The Court concludes that Dr. Ugone's analysis of lost profits under the *Panduit* test is sufficiently

reliable with respect to Liberty "

In summary, Dkt# 280 shows that Dr. Ugone's opinions were accepted by the court, and the arguments that were made by Greenberg regarding "OSE1" as a non-infringement alternative (Pg. 3) were not, and as a consequence *a multimillion dollar exposure in the hands of a jury is a major gamble for Stingray based on loss profits (At least $23.09M).*

However and in my opinion, Dr. Ugone's arguments on loss profits, require **all factors** of the Panduit test to be **valid**, the court believes that all the factors are **true**. Nonetheless, a license to my patents & technology would eliminate **Panduit 's 2nd factor and the overall Panduit test will fail** (See Dkt# 280 on Pg. 6 and 7). I strongly believe that the admitted damages report may no longer be useful at trial, if Stingray presents **my** patented technology to be an alternative non-infringing solution with a visual complement feature (Dkt #280 at Pg. 7) as **it cites Music Choices' patents as prior-art.**

I believe then by a deal with me, Stingray could defuse Dr. Ugone's arguments with ease. **As a consequence, a huge reduction from a loss profits amount in a damages report to a reasonable royalty which is assumed to be much less.**

In the event you take a license to my patents and technology, you can demonstrate to the court that there was an alternative non-infringing solution that existed around 2015 that you paid X for a license to the patents, maybe Y for license to the software w/ source code, and Z for integration to your platform and your burden of proof will be met. I strongly advise you to reach out to your lawyers and review my proposal. **Besides of current benefits to this litigation, you will have a patented technology with a recently issued patent that can only catapult your business and no more distracting litigation.**

In case you don't pursue this route, you are gambling on trial events, invalidity arguments, a jury to judge on your favor, and likely litigate an appeal later, even if you win. Worst case scenario, which is now plausible, is that Stingray will have to post an **appeal bond** for ($23M to $70M or higher) with a collateral of multi-million dollars if the judgement includes punitive damages, such bond may impact your aggressive acquisition strategy and growth, and I wound not rule out an injunction relief which will put in danger your revenues from the US Market. Once again, consult with your attorneys about these potential issues.

If you believe that if there in an interest on a licensing agreement to my patents, software & technology please reach me directly to the numbers below or come visit Boca Raton, FL for a face to face meeting. I am also open to acquiring the portfolio, I am flexible.

Obviously, in the hypothetical situation that MC approaches me with a large offer that includes a patent acquisition or something interesting for me, this option will not be available, and that would simply reinforce MC's positions against you.

Best Regards,

Dr. Edwin A. Hernandez
Owner & Founder | Expert Witness | Consultant | Patents | Innovation
751 Park of Commerce Dr. Suite 128, Boca Raton, FL, 33487
Cell: 561.306.4996 Fax: 954.919.1494
eglacorp.com | eglacomm.net | cloudtocable.com | eglavator.com | mobilityworkx.com

EXHIBIT 21

Thursday, April 22, 2021 at 19:29:11 Eastern Daylight Time

Subject: Solution to Greenberg's withdrawal
Date: Wednesday, January 1, 2020 at 7:42:50 PM Eastern Standard Time
From: Dr. Edwin A. Hernandez
To: Lloyd Feldman
CC: board@stingray.com, Alcides Hernandez, eboyko@stingray.com, cdk@hanshawkennedy.com
Priority: High
Category: Emails
Attachments: image001.png, image002.png, IP Cloud to Cable Licensing - public - small.pdf, 10524002.pdf, 10123074 patent .pdf, CLOUDtoCABLE TERMSHEET for STINGRAY DIGITAL.pdf

Hi Lloyd, Mr. Kennedy and Stingray's board,

As the subject reads, I have a solution to Greenberg's withdrawal and your case against Music Choice. I have read the motion to withdraw from Greenberg and it is disappointing to see how GT has left your company in this position, specially this late in your litigation and after your company spent $9M in legal fees (according to Mr. Kennedy's motion on Dec 31st, 2019).

You most likely have seen my licensing proposal received by Stingray on July 2019. This proposal is now enriched as it now includes two issued patents covering a **non-infringing alternative** to Music Choice's technologies those are 10,123,074, US10,524,002 (attached), plus a new patent continuation filed last week, plus PCT 16/152,606 and European patent EP3238457 (See attachment for detailed portfolio).

My licensing proposal also includes a **software implementation** that has been tested with cable operators and deployed in production systems.

My proposal will enable Stingray within a short timeframe could notify the court that you have switched to a new non-infringing solution covered by my patents and technologies. Additionally, a licensing agreement with me will nullify Music Choice's damages report requesting loss profits.

I sent copies of my proposal to you and in the past contacted GT's shareholders in person last year in Fort Lauderdale, FL. I visualized this scenario and proposed a solution that was beneficial to Stingray, back then a GT client. I assumed that GT didn't inform you about it, or advised you that my patents were not an option, in summary, I ignore was their recommendation made by GT to Stingray. Clearly, whatever advice was given to you was not successful.
I insist that at this stage of trial and withdrawal of Greenberg, my proposal and solution is now more valuable for Stingray today than it was last year.

In all due respect, I can provide you expert opinion, that my solution is your best viable path to solve this litigation and continue doing business as usual with old and new clients.

I have prepared the attached "term sheet" as a reference bullet points for licensing negotiations purposes with you, expecting Stingray evaluates it as a viable option and makes a proposal in terms of pricing and send it back to me for review.

Best Regards,

Dr. Edwin A. Hernandez
Owner & Founder | Expert Witness | Consultant | Patents | Innovation
751 Park of Commerce Dr. Suite 128, Boca Raton, FL, 33487
Cell: 561.306.4996 Fax: 954.919.1494
eglacorp.com | eglacomm.net | cloudtocable.com | eglavator.com | mobilityworkx.com

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From: Edwin Hernandez <edwinhm@eglacorp.com>
Date: Monday, November 11, 2019 at 11:01 AM
To: Lloyd Feldman <lfeldman@stingray.com>
Cc: <board@stingray.com>, Alcides Hernandez <alcidesh@eglacorp.com>
Subject: Potential solution to Music Choice's Damages Report admitted by Judge with multi-million dollar exposure.

Dear Lloyd & Board of Directors of Stingray,

As you know, I have been tracking your case against MC and recent rulings have been adverse to Stingray, specially the denied motion to a Daubert challenge made to Dr. Ugone's multimillion dollar damages report. The judge stated that OSE1 is not a viable non-infringing alternative and Ugone's analysis is reliable. The bad news is that Dr. Ugnone's report will be presented to a jury on trial starting on Dec 9th. As you may recall, my patents create a visual complement feature to the music stream that is broadcasted to a Cable TV system in MPEG format and others, plus the same system can generate VOD streams that can be used for SVOD. The patent portfolio that I own contains 39 approved claims (see attachments "10123074 patent.pdf" and "Notice of allowance – Cloud to Cable 2019.pdf") covering precisely the visual complement feature, SVOD, plus a software & hardware implementation that has been tested in several cable TV systems.

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I am not an attorney but I have been a technical expert witness for several patent & IP lawsuits and recently worked as a damages expert for another case in the E.D. of Texas . Besides that, my company, Mobility Workx, is scheduled to go to trial on patent infringement grounds against Verizon on Dec 2nd , in the E.D. of Texas in front of Judge Mazzant, as you can anticipate my own case is set to trial after fighting with experienced attorneys from Alston & Bird. Moreover, I have been assisting other tech companies in other patent cases & IP matters. I am also the inventor of now 12 issued patents including two, in the patent portfolio that I submitted for Stingray's review in July (attached "Offering to stingray….pdf").

A license to my portfolio offering would eliminate the validity of the **Panduit test that the court states as "Reliable"** which is discussed in Dkt # 280 (attached) and this is the reason why your exposure is now a **multi-million dollar liability** . It appears that Liberty and AT&T alone triggered $15.7M of exposure plus $7.4M loss profits with others (Pg. 9). On Pg. 7 of Dkt #280 the judge states that:

"The Court concludes that Dr. Ugone's analysis of lost profits under the *Panduit* test is sufficiently

reliable with respect to Liberty "

In summary, Dkt# 280 shows that Dr. Ugone's opinions were accepted by the court, and the arguments that were made by Greenberg regarding "OSE1" as a non-infringement alternative (Pg. 3) were not, and as a consequence *a multimillion dollar exposure in the hands of a jury is a major gamble for Stingray based on loss profits (At least $23.09M).*

However and in my opinion, Dr. Ugone's arguments on loss profits, require **all factors** of the Panduit test to be **valid**, the court believes that all the factors are **true**. Nonetheless, a license to my patents & technology would eliminate **Panduit 's 2nd factor and the overall Panduit test will fail** (See Dkt# 280 on Pg. 6 and 7). I strongly believe that the admitted damages report may no longer be useful at trial, if Stingray presents **my** patented technology to be an alternative non-infringing solution with a visual complement feature (Dkt #280 at Pg. 7) as **it cites Music Choices' patents as prior-art.**

I believe then by a deal with me, Stingray could defuse Dr. Ugone's arguments with ease. **As a consequence, a huge reduction from a loss profits amount in a damages report to a reasonable royalty which is assumed to be much less.**

In the event you take a license to my patents and technology, you can demonstrate to the court that there was an alternative non-infringing solution that existed around 2015 that you paid X for a license to the patents, maybe Y for license to the software w/ source code, and Z for integration to your platform and your burden of proof will be met. I strongly advise you to reach out to your lawyers and review my proposal. **Besides of current benefits to this litigation, you will have a patented technology with a recently issued patent that can only catapult your business and no more distracting litigation.**

In case you don't pursue this route, you are gambling on trial events, invalidity arguments, a jury to judge on your favor, and likely litigate an appeal later, even if you win. Worst case scenario, which is now plausible, is that Stingray will have to post an **appeal bond** for ($23M to $70M or higher) with a collateral of multi-million dollars if the judgement includes punitive damages, such bond may impact your aggressive acquisition strategy and growth, and I wound not rule out an injunction relief which will put in danger your revenues from the US Market. Once again, consult with your attorneys about these potential issues.

If you believe that if there in an interest on a licensing agreement to my patents, software & technology please reach me directly to the numbers below or come visit Boca Raton, FL for a face to face meeting. I am also open to acquiring the portfolio, I am flexible.

Obviously, in the hypothetical situation that MC approaches me with a large offer that includes a patent acquisition or something interesting for me, this option will not be available, and that would simply reinforce MC's positions against you.

Best Regards,

Dr. Edwin A. Hernandez
Owner & Founder | Expert Witness | Consultant | Patents | Innovation
751 Park of Commerce Dr. Suite 128, Boca Raton, FL, 33487
Cell: 561.306.4996 Fax: 954.919.1494
eglacorp.com | eglacomm.net | cloudtocable.com | eglavator.com | mobilityworkx.com

EXHIBIT 22

Saturday, April 17, 2021 at 15:51:58 Eastern Daylight Time

Subject: Re: EGLA CORP Contact Info
Date: Thursday, September 14, 2017 at 9:21:22 PM Eastern Daylight Time
From: Lloyd Feldman
To: Mario Dubois, Edwin Hernandez, PhD, Philippe Côté

Sure. I will circulate a mutual NDA tomorrow.

Sent from my BlackBerry - the most secure mobile device - via the Bell Network

From: mdubois@stingray.com
Sent: September 14, 2017 9:06 PM
To: edwinhm@eglacorp.com; lfeldman@stingray.com; pcote@stingray.com
Subject: Re: EGLA CORP Contact Info

I'm glad you are back and safe. I hope the damage sto your properties are not to bad.

I will review with our lawers and come back to you asap.

LLoyd: can we prepare a mutual NDA?

Philippe: can you quickly review?

Mario

Sent from Nine

From: "Edwin Hernandez, PhD" <edwinhm@eglacorp.com>
Sent: Sep 14, 2017 18:58
To: Mario Dubois
Subject: Re: EGLA CORP Contact Info

Hi Mario,

We are almost back to normal in our office. I cannot disclose “Claim Charts” and such details unless we are legally protected for that to be able to compare it with Music Choice technology publicly disclosed.

HI Mario,

For now, you can forward to your layers the presentation attached and this email:

- The first piece of IP is covered by https://patentscope.wipo.int/search/docservicepdf_pct/id00000033995737/PAMPH/WO2016106360.pdf details on WIPO **https://patentscope.wipo.int/search/en/detail.jsf?docId=WO2016106360** This is a workaround for “Music Choice” patents based on their Cable TV Broadcasting System also called “Interactive Visual Component for Audio” described by US. Patent No. US7275256, US7926085, US9357245, and US8769602 as well as their On-Demand patents 9,414,121**, US7320025, US8166133, and US9351045**

- The second piece covers Music Choice App (iOS/Android when interacts with Chromecast, Apple TV, Roku, or other connected devices and STBs. US **7,339,493**

(http://corporate.musicchoice.com/mobile/music-choice-apps/), Additionally, other claim charts can be drawn with other STBs can be provided upon request.

- **Amazon Fire https://www.amazon.com/Music-Choice/product-reviews/B00EW37XOC**
- **Android https://play.google.com/store/apps/details?id=com.music.choice&hl=en**
- **Music Choice Ad http://corporate.musicchoice.com/files/7114/5831/0699/Music_Choice_TVE.pdf**
- **IOS https://itunes.apple.com/us/app/music-choice/id573887614?mt=8**

In summary, the first piece of intellectual property is covered under Cloud to Cable TV https://eglacomm.net/2017/07/our-cloud-to-cable-patent-technology/ and represents a more advanced way to broadcast media to Cable TV systems like Stingray or Music Choice using the cloud and modern techniques. The 2nd piece of IP covers how the Music Choice App currently works specially all interactions with STBs such as Chromecast, Apple TV, Amazon Fire, or other devices where your mobile phone controls the TV.

I control both assets and pricing/claim chart discussions can be done under NDA.

Best Regards

Edwin A. Hernandez

From: Mario Dubois <mdubois@stingray.com>
Date: Wednesday, September 6, 2017 at 9:06 AM
To: Edwin Hernandez <edwinhm@eglacorp.com>
Subject: Re: EGLA CORP Contact Info

Take care and good luck. I will wait for news from you onxe you are safe.

Mario

Sent from Nine

From: "Dr. Edwin Hernandez" <edwinhm@eglacorp.com>
Sent: Sep 6, 2017 9:05 AM
To: Mario Dubois
Subject: Re: EGLA CORP Contact Info

Yes we are under a cat 5 hurricane threat

And have been vista preparing ...

Hurricane Irma ....

Edwin Hernandez, PhD
EGLA COMMUNICATIONS
http://eglacomm.net | http://mediamplify.com
http://www.edwinhernandez.com
----------iPhone

On Sep 1, 2017, at 2:06 PM, Mario Dubois <mdubois@stingray.com> wrote:

> Now is good sorry
>
> Sent from Nine
>
> ---
>
> **From:** "Dr. Edwin Hernandez" <edwinhm@eglacorp.com>
> **Sent:** Sep 1, 2017 2:02 PM
> **To:** Mario Dubois
> **Cc:** Lloyd Feldman
> **Subject:** Re: EGLA CORP Contact Info
>
> Just gave you a call, please let me know a good time to
> Touchbase
>
> Regards,
>
> Edwin Hernandez, PhD
> EGLA COMMUNICATIONS
> http://eglacomm.net | http://mediamplify.com
> http://www.edwinhernandez.com
> ----------iPhone
>
> On Sep 1, 2017, at 7:55 AM, Mario Dubois <mdubois@stingray.com> wrote:
>
> > Hi, I don't think I received the invite.
> >
> > Is it possible to postpone in the afternoon around 2pm
> >
> > Mario
> >
> > Sent from Nine
> >
> > ---

From: "Edwin Hernandez, PhD" <edwinhm@eglacorp.com>
Sent: Aug 31, 2017 1:24 PM
To: Mario Dubois
Cc: Lloyd Feldman
Subject: Re: EGLA CORP Contact Info

Hi Mario and Lloyd,

I have sent a meeting request for tomorrow and I am attaching a PDF describing the main aspects of our technology for you to review with your attorneys,

Regards,

--
Edwin A. Hernandez, PhD
Chief Technology Officer
EGLA COMMUNICATIONS
"MEVIA, SAFEFI, MOBILECAD, MOBILE IPP, Intellectual Property, media/music for Cable TV distribution "
<image001.png>
Twitter | *Facebook*
www.eglacomm.net | www.mediamplify.com
561.869.4446 * 561.306.4996 * +504.95157703 * Fax: 954.919.1494
skype: edwinhe eglacomm

From: Mario Dubois <mdubois@stingray.com>
Date: Thursday, August 31, 2017 at 11:53 AM
To: Edwin Hernandez <edwinhm@eglacorp.com>
Cc: Lloyd Feldman <lfeldman@stingray.com>
Subject: Re: EGLA CORP Contact Info

Hi Edwin,

Can we have a quick call to discuss about it?

Available tomorrow around 11h30 or in the afternoon.

Mario

Mario Dubois
VPP & Chef de la direction technique / SVP & Chief Technology Officer

T +1.514.664.1244 #2223 stingray.com
730, rue Wellington, Montréal (Québec) Canada H3C 1T4



From: Edwin Hernandez, PhD [mailto:edwinhm@eglacorp.com]
Sent: August 28, 2017 2:50 PM
To: Geoffroy Balthazard <gbalthazard@stingray.com>
Subject: EGLA CORP Contact Info

Hi Geoffey,

As I said over the phone, I have an alternative way for Stingray to get out of the Music Choice lawsuit. I'd be happy to discuss,

Best Regards,

--
Edwin A. Hernandez, PhD
Chief Technology Officer
EGLA COMMUNICATIONS
"MEVIA, SAFEFI, MOBILECAD, MOBILE IPP, Intellectual Property, media/music for Cable TV distribution "
<image002.png>
Twitter | *Facebook*
www.eglacomm.net | www.mediamplify.com
561.869.4446 * 561.306.4996 * +504.95157703 * Fax: 954.919.1494
skype: edwinhe eglacomm

EXHIBIT 23

EGLA COMMUNICATIONS
751 Park of Commerce Dr. Suite 128,
Boca Raton, FL, 33487

eglacomm.net| cloudtocable.com| eglacorp.com
561.306.4996| Fax: 954.919.1494

July 12th, 2019

Mr. Eric Boyko
Chief Executive Officer - Stingray Digital
Cc/ Louis-Robert Lemire
730 Wellington Street,
Montreal, Quebec, HC3 1T4, Canada.

Dear Mr. Boyko,

I understand your company is a defendant in a patent infringement litigation against Music Choice in the Eastern District of Texas. Alternatively, not long ago, Stingray Digital withdrew an offer to acquire Music Choice for $120M.

In the past, I have contacted your attorneys at Greenberg and Traurig, and your VP of Legal, Mr. Lloyd Feldman, regarding the benefits to Stingray of our patented portfolio, specially signaled to them how our patents are an effective defense to the litigation you are in, and how they may fit into the future as your company becomes a media leader.

Our patented portfolio and software is called Cloud to Cable and it is an alternative non-infringing solution to Music Choice patents. As a matter of fact, our intellectual property was included and examined by the US Patent Office (USPTO) as part of the patent filing process. The USPTO should have compared our innovations with MC's patents. One of those patents is Del Baccaro's family that is currently used against your company in the litigation, therefore it is clear that our portfolio is a non-infringing alternative to Music Choice's patents.

Additionally, when your company acquired DMX from Mood Media a few years ago, your executives Gustavo Tonelli and Alejandro Cacciola requested my company to maintain our cloud-based service active while Stingray transitioned all operations from DMX to your control.

At that time, our company was transporting and distributing all DMX/Mood Media music to several cable operators in LATAM using some of our technologies.

Hence, our R&D and patents are a result of many years of software development and technological innovation.

Attached you can find a slide deck where we present to you with more details the contents of this letter.

EGLA COMMUNICATIONS
751 Park of Commerce Dr. Suite 128,
Boca Raton, FL, 33487

eglacomm.net| cloudtocable.com| eglacorp.com
561.306.4996| Fax: 954.919.1494

Our team believes that our portfolio will assist your company in two ways:

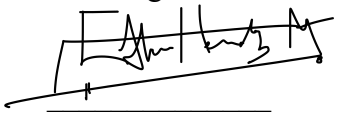
- First, Stingray will be able to mitigate or even eliminate damages from Music Choice's litigation and decrease uncertainty derived from Litigation. Stingray can present to the court and alternative non-infringing solution, a patent will be a definitive proof of that,
- And Second, Stingray will have access to a patented technology that is unique worldwide. This technological pioneering patent is a state-of-the-art technological innovation that will come to strengthen your IP portfolio.

From your annual reports, it is clear that your business has already spent millions of dollars in legal fees. I am an expert witness myself and can only guarantee you that as you prepare for trial, and attorneys file answering replies, and other motions, your legal bill will skyrocket even higher. In general, trial may account for a few million dollars and you will be presented to a jury and an unknown outcome.

In addition to the benefits presented herein, Stingray will have a more efficient and innovative technology by having access to our portfolio.

I am looking forward to hearing from you or your attorneys soon and discuss nex steps. .

Best Regards,



Dr Edwin A Hernandez
Inventor and Chief Technology Officer
EGLA CORP
eglacorp.com | eglacomm.net/ip | cloudtocable.com
edwinhm@eglacorp.com | 561.306.4996

STINGRAY
ALL GOOD VIBES

EGLA CORP

Licensing Business Case for Stingray Digital

Acquisition of a license for the 10,123,074 patents and applications with EGLA CORP

By **Dr. Edwin A. Hernandez Mondragon**
Inventor and Owner
edwinhm@eglacorp.com

Stingray's Patent Portfolio

Issued Patents	• US Patent 9,363,562
Applications	• None

Markets and Stingray Income Statement

Revenues per Quarter (March 31, 2019) & Per Year	$72,730,000 $212,650,000
Net Income per Quarter	$3,942,000
Market Cap	$501M

Litigation with Music Choice

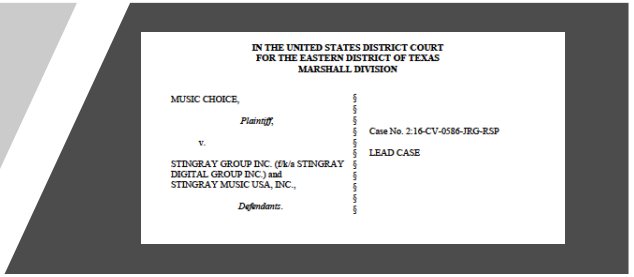
- Music Choice is jointly owned by Charter Communications, Comcast, Cox Communications, Sony Corporation of America, WarnerMedia, Arris, and Microsoft. The service offers audio and video music channels to pay TV and cable operators, counting Charter, Comcast, Cox and others among its customers.

Per year

• March 31, 2019	$16.8M
• March 31, 2018	$10.6M
• March 31, 2017	$4.6M
• March 31, 2016	Not a line Item

Source: Annual Reports 2016-2019

Legal and Litigation Expenses



IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

MUSIC CHOICE,
Plaintiff,
v.
STINGRAY GROUP INC. (f/k/a STINGRAY DIGITAL GROUP INC.) and STINGRAY MUSIC USA, INC.,
Defendants.

Case No. 2:16-CV-0586-JRG-RSP
LEAD CASE

Exposure

- Stingray offered $120M for Music Choice in 2018
  - Offer withdrawn Jan 2019 by Stingray Digital
- Erik Boyko, CEO of Stingray stated August 8th, 2018 that:
  - Music Choice had 70M subscribers
  - And, $55M in Revenues per year
- Assuming a $0.70c/subscriber per year
  - Music Choice lost AT&T, Altice USA, Optimum, Suddenlink, others.
  - Stingray Revenues in the US are $9.4M per quarter, or $34.4M per year in 2019
- **Eroded Market Share from Music Choice $30M/year in 5 years close to $150M in loss revenues. However Music Choice is apparently more expensive. Assuming 30% higher $200M in 5 years: $60-100M in loss profits**

Music Choice, Dr. Keith Ugone Damages Report

Music Choice Damages
$60-100M in loss profits

Report is Redacted,
Values are speculated

This is a patent infringement action involving increasingly irrelevant technology—linear audio and video on demand ("VOD") music channels transmitted to consumers by cable and satellite television providers. The number of cable and satellite television subscribers is rapidly declining each year. Nonetheless, MC's damages expert, Dr. Keith R. Ugone, opined that MC suffered over [redacted] in lost profits and price erosion damages based on the flawed assumption that, had Stingray not offered purportedly infringing products, the prices paid for MC's services by its customers—i.e., the same cable and satellite television providers whose subscriber counts are ***decreasing***—would not have changed. Dr. Ugone did not consider and/or discuss any market forces in making this assumption. Similarly, Dr. Ugone did not consider and/or discuss the ample evidence of [redacted] several years before Stingray even entered the market with its allegedly infringing technology. Instead, Dr. Ugone simply looked at what MC's customers agreed to pay immediately prior to Stingray's alleged infringement,

Music Choice, Dr. Keith Ugone Damages Report

Music Choice Damages
$60-100M in loss profits

Report is Redacted,
Values are speculated

B. Dr. Ugone's Opinions With Respect To Lost Profits Should Be Excluded

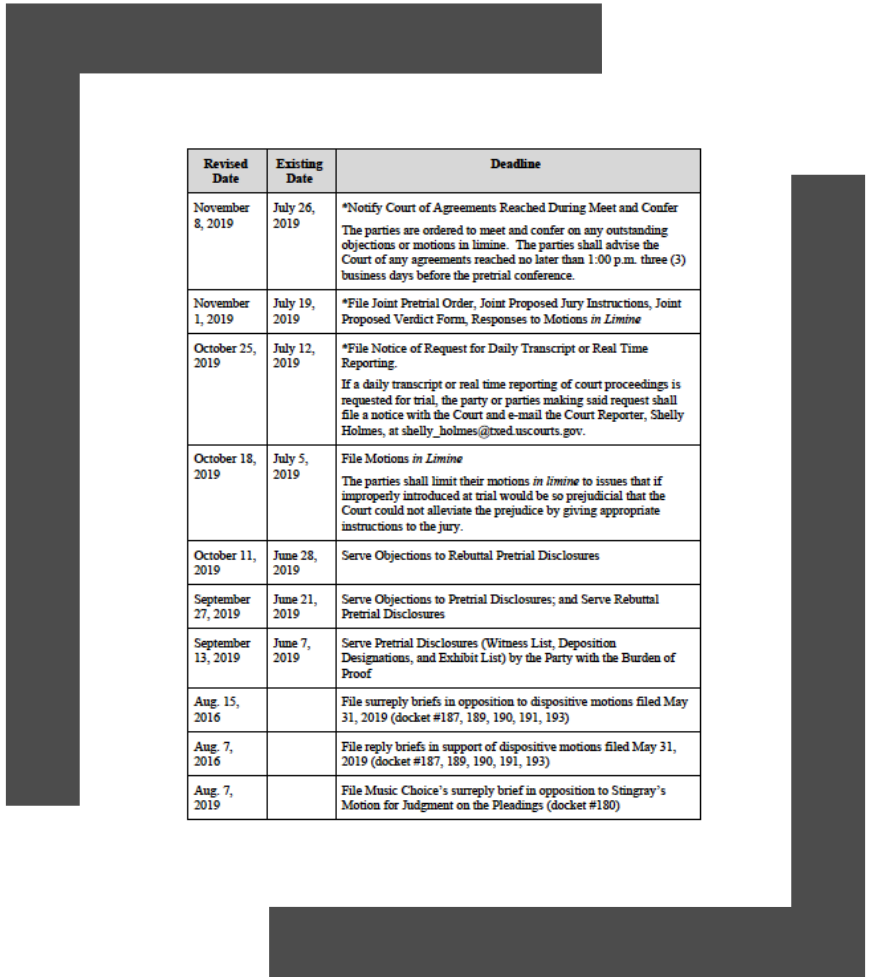
Dr. Ugone opines that MC should be awarded [redacted] in lost profits for infringement of the Visual Complement Patent and [redacted] in lost profits for infringement of the VOD Linking Patents. (Supplemental Report (Ex. 13), Table 2.) "To recover lost profits, the patentee bears the burden of proof to show a reasonable probability that but for infringement, it would have made the sales that were made by the infringer." *Presido Components, Inc. v. Am. Techn. Ceramics Corp.*, 875 F.3d 1369, 1380 (Fed. Cir. 2017) (citations omitted). "But-for causation can be proven using the test given in

Revised Date	Existing Date	Deadline
Aug. 5, 2016		File surreply briefs in opposition to motions to strike expert testimony filed May 31, 2019 (docket #186, 188, 192)
July 25, 2016		File reply briefs in support of motions to strike expert testimony filed May 31, 2019 (docket #186, 188, 192)
July 23, 2019		File briefs in opposition to dispositive motions filed May 31, 2019 (docket #187, 189, 190, 191, 193)
July 23, 2019	June 21, 2019	File Stingray's reply brief in support of Motion for Judgment on the Pleadings (docket #180)
July 16, 2019		File briefs in opposition to motions to strike expert testimony filed May 31, 2019 (docket #186, 188, 192)

(*) indicates a deadline that cannot be changed without showing good cause. Good cause is not shown merely by indicating that the parties agree that the deadline should be changed.

Liability Increases – Calendar of Events

- **Potential Exposure and Risk**
- Liability Continues
- Uncertain Outcome, rolling the dice
- Legal Costs will rise between $5M - $10M
  - Reply to all motions
  - Trial costs



Revised Date	Existing Date	Deadline
November 8, 2019	July 26, 2019	*Notify Court of Agreements Reached During Meet and Confer The parties are ordered to meet and confer on any outstanding objections or motions in limine. The parties shall advise the Court of any agreements reached no later than 1:00 p.m. three (3) business days before the pretrial conference.
November 1, 2019	July 19, 2019	*File Joint Pretrial Order, Joint Proposed Jury Instructions, Joint Proposed Verdict Form, Responses to Motions *in Limine*
October 25, 2019	July 12, 2019	*File Notice of Request for Daily Transcript or Real Time Reporting. If a daily transcript or real time reporting of court proceedings is requested for trial, the party or parties making said request shall file a notice with the Court and e-mail the Court Reporter, Shelly Holmes, at shelly_holmes@txed.uscourts.gov.
October 18, 2019	July 5, 2019	File Motions *in Limine* The parties shall limit their motions *in limine* to issues that if improperly introduced at trial would be so prejudicial that the Court could not alleviate the prejudice by giving appropriate instructions to the jury.
October 11, 2019	June 28, 2019	Serve Objections to Rebuttal Pretrial Disclosures
September 27, 2019	June 21, 2019	Serve Objections to Pretrial Disclosures; and Serve Rebuttal Pretrial Disclosures
September 13, 2019	June 7, 2019	Serve Pretrial Disclosures (Witness List, Deposition Designations, and Exhibit List) by the Party with the Burden of Proof
Aug. 15, 2016		File surreply briefs in opposition to dispositive motions filed May 31, 2019 (docket #187, 189, 190, 191, 193)
Aug. 7, 2016		File reply briefs in support of dispositive motions filed May 31, 2019 (docket #187, 189, 190, 191, 193)
Aug. 7, 2019		File Music Choice's surreply brief in opposition to Stingray's Motion for Judgment on the Pleadings (docket #180)

Liability Continues for a few more months

- **<u>Liability Continues</u>**
- **More court dates, more motions.**
- **Legal Costs will rise between $5M - $10M**
  - **Reply to all motions**
  - **Trial costs**

continuing the trial date to December 2, 2019, it is hereby ORDERED that the following schedule of deadlines is in effect until further order of this Court:

Revised Date	Existing Date	Deadline
December 2, 2019	August 19, 2019	*Jury Selection – 9:00 a.m. in Marshall, Texas before Judge Rodney Gilstrap
November 12, 2019	July 29, 2019	*Pretrial Conference – 9:00 a.m. in Marshall, Texas before Judge Roy Payne.[2]

[2] In accordance with its March 31, 2017 Order (docket #94), unless otherwise ordered by the Court, the Court will determine whether the Court should consolidate the claims asserted in the lead and

Trial Day Set – December 2nd

- December 2nd, 2019
- Marshall Texas, Judge Roy S. Payne
- Even after this could be appeals and more.

US010123074B2

(12) **United States Patent**
Hernandez-Mondragon

(10) **Patent No.: US 10,123,074 B2**
(45) **Date of Patent: Nov. 6, 2018**

(54) **METHOD, SYSTEM, AND APPARATUS FOR MULTIMEDIA CONTENT DELIVERY TO CABLE TV AND SATELLITE OPERATORS**

(71) Applicant: **Edwin A. Hernandez-Mondragon**, Coral Springs, FL (US)

(72) Inventor: **Edwin A. Hernandez-Mondragon**, Coral Springs, FL (US)

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days.

(21) Appl. No.: **15/538,911**

(22) PCT Filed: **Dec. 22, 2015**

(86) PCT No.: **PCT/US2015/067464**
§ 371 (c)(1),
(2) Date: **Jun. 22, 2017**

(87) PCT Pub. No.: **WO2016/106360**
PCT Pub. Date: **Jun. 30, 2016**

(65) **Prior Publication Data**

US 2017/0374417 A1 Dec. 28, 2017

Related U.S. Application Data

(60) Provisional application No. 62/095,504, filed on Dec. 22, 2014.

(51) **Int. Cl.**
H04N 21/4402 (2011.01)
H04N 21/2343 (2011.01)
(Continued)

(52) **U.S. Cl.**
CPC ... ***H04N 21/440218*** (2013.01); ***H04N 21/233*** (2013.01); ***H04N 21/2387*** (2013.01);
(Continued)

(58) **Field of Classification Search**
CPC H04N 21/440218; H04N 21/233; H04N 21/234309; H04N 21/2387;
(Continued)

(56) **References Cited**

U.S. PATENT DOCUMENTS

6,886,178 B1 4/2005 Mao et al.
7,020,888 B2 3/2006 Reynolds et al.
(Continued)

OTHER PUBLICATIONS

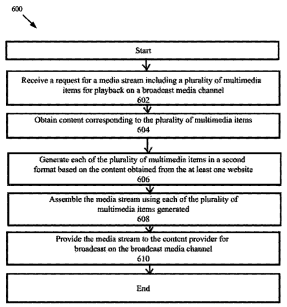
Justin Pot: "Save Videos From Any Site—Even Netflix—With Applian's Replay Capture Suite", Jun. 3, 2014 (Jun. 3, 2014), XP055472253, Retrieved from the Internet: URL:https://www.makeuseof.com/tag/savevideos- from-any-site-even-netflix-with-applians-replay-capture-suite/ [retrieved on May 3, 2018].
(Continued)

Primary Examiner — Hunter B Lonsberry
(74) *Attorney, Agent, or Firm* — Fox Rothschild LLP

(57) **ABSTRACT**

Systems, methods, and computer-readable media for delivering multimedia content from the cloud to cable operators are disclosed. A device located at the cable headend or implemented in the cloud can receive a request for at least one media stream for playback on a broadcast media channel. Content corresponding to a plurality of multimedia files in the media stream can be obtained from the internet or a cloud based service. The content can be used to generate the multimedia files in a format that is compatible with the cable operator. The multimedia files can be used to assemble the at least one media stream which can be provided to the cable operator for broadcast on the broadcast media channel.

21 Claims, 12 Drawing Sheets





Solution

Licensing of the 10,123,074 Portfolio of patents 'and software

Analysis and Inventions on 10,123,074 Patent

- **Linear and VOD Streaming of Music, Music + Video, or Video/TV to Cable TV Operators**
- Rendering of HTML-based webpages from temporal screen captures and creating video streams with audio ready for broadcasting to MPEG Systems (aka Cable TV, DTH) for Linear or VOD Broadcasting
- Creating all screen captures and storing them in MPEG Format for 2-way interaction (VOD)
- Deployment and distribution using virtual machines or instances
- CDN integrated for Web, Mobile, and Cable TV broadcasting
- Fault-tolerance and detection
- Multiple Streaming protocols supported

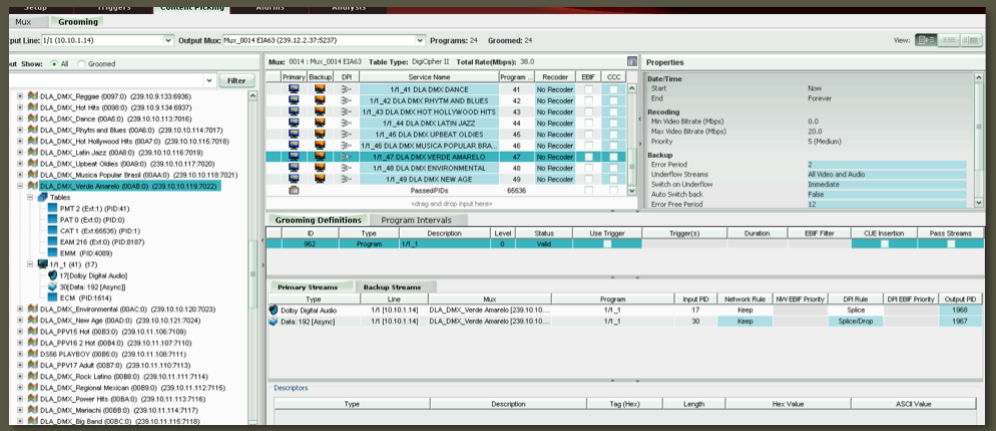


Mevia
CLOUDTOCABLE

Additional Intellectual Property

- Software for Cloud to Cable TV Appliance
  - Tested in Head ends in LATAM and US
- APIs and software for system and implementation
- Technical Assistance and Engineering Support





US Patent 10,123,074 Cites Patents in Dispute

Patent Citations (14)

Publication number	Priority date	Publication date	Assignee	Title
US20020138852A1	2000-11-27	2002-09-26	Steven Reynolds	System and method for providing an omnimedia package
US20030115612A1	1998-04-01	2003-06-19	Morecom, Inc.	Digital TV system with synchronized World Wide Web content
US7320025B1	2002-03-18	2008-01-15	Music Choice	Systems and methods for providing a broadcast entertainment service and an on-demand entertainment service
US20080040354A1	2006-08-10	2008-02-14	Qualcomm Incorporated	System and method for media content delivery
US20080098426A1 *	2006-10-23	2008-04-24	Candelore Brant L	Decoding multiple remote control code sets
US20090178003A1	2001-06-20	2009-07-09	Recent Memory Incorporated	Method for internet distribution of music and other streaming content
US20100192178A1 *	2009-01-26	2010-07-29	Candelore Brant L	Capture of stylized TV table data via OCR
US20120204217A1	2010-10-14	2012-08-09	Activevideo Networks, Inc.	Streaming Digital Video between Video Devices Using a Cable Television System
US20140068690A1	2012-08-31	2014-03-06	General Instrument Corporation	Broadcast content to http client conversion
US20140098815A1 *	2012-10-10	2014-04-10	Telefonaktiebolaget L M Ericsson (Publ)	Ip multicast service leave process for mpls-based virtual private cloud networking
US20140143437A1	2012-11-16	2014-05-22	Adobe Systems Incorporated	Converting Live Streaming Content to Video-on-Demand Streaming Content
US8769602B1	2001-08-28	2014-07-01	Music Choice	System and method for providing an interactive, visual complement to an audio program
US20140351871A1	2013-05-22	2014-11-27	Microsoft Corporation	Live media processing and streaming service
US20150319004A1 *	2007-08-31	2015-11-05	At&T Intellectual Property I, L.P.	System and method of monitoring video data packet delivery

- Visual Component Patent
- VOD Patents

Music Choice filed its original Complaint against the Corporation on June 6, 2016, asserting infringement of four U.S. patents, namely, U.S. Patent Nos. **8,769,602** (the '602 Patent), **9,357,245** (the '245 Patent), **7,320,025** (the '025 Patent) and 9,351,045 (the '045 Patent).

- **……** Dr. Ugone did not determine whether Stingray's _____ is an acceptable non-infringing alternative ***as compared to MC's linear audio music channels***. Had he done this analysis, he would have determined that it is. (*See* Ugone Tr.

- Reply Brief No. 203 - Music Choice v. Stingray Digital

Cloud to Cable is a non-infringing alternative to MC's Patents

Mitigation Strategy thru Licensing of an entire media streaming porfolio

US Patent: 10,123,074

US Patent application: 16/152,606

European Patent Application : EP3238457 (A1)

Technology: Cloud to Cable TV Software

Used by DMX Media during the acquisition with Stingray Digital

Thank you
Feel free to contact US

www.eglacorp.com
Dr. Edwin A. Hernandez
sales@eglacorp.com
561.306.4996



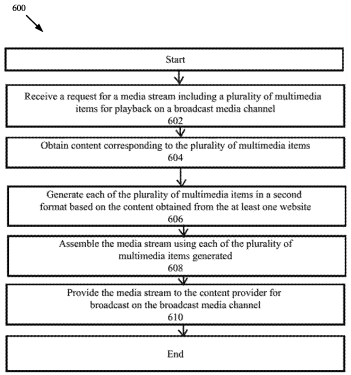
EXHIBIT 24

February 8, 2024
Performed by: EDWIN

10123074

US10123074B2

US10123074B2	
Assignee:	HERNANDEZ MONDRAGON EDWIN A
Title:	Method, system, and apparatus for multimedia content delivery to cable TV and satellite operators
Filing Date:	2015-12-22
Publication Date:	2018-11-06
Inventor:	HERNANDEZ-MONDRAGON EDWIN A
Earliest Priority:	2014-12-22
Maint. Status:	2022-10-27 Payment of Maintenance Fee, 4th Yr, Small Entity.; Surcharge for late Payment, Small Entity.



Abstract: Systems, methods, and computer-readable media for delivering multimedia content from the cloud to cable operators are disclosed. A device located at the cable headend or implemented in the cloud can receive a request for at least one media stream for playback on a broadcast media channel. Content corresponding to a plurality of multimedia files in the media stream can be obtained from the internet or a cloud based service. The content can be used to generate the multimedia files in a format that is compatible with the cable operator. The multimedia files can be used to assemble the at least one media stream which can be provided to the cable operator for broadcast on the broadcast media channel.

Claims:

1	A computer-implemented method comprising:	The software used by UbiquiCAST are computer implemented methods.
	[a] receiving, from a content provider, a request for at least one media stream for playback on a broadcast media channel, wherein the at least one media stream includes a plurality of multimedia items of different types;	As shown at EGLA-TRELLO-00001, the content provider contains at least one media file, as shown the playlist is GX45_NT.xml. Each entry in the playlist is a reference to a file in AC3 format at 96Kbps or 128Kbps as shown at EGLA-TRELLO-00475. As shown at EGLA-TRELLO-000497 the Audio (Program Identifier) are loaded from AWS or other servers. The OSE2 captures that were made and available via FTP at EGLA-TRELLO-000513 the AC3_192K_100ch_OSE2_144K.ts is the file with audio AC3 and 192Kbps audio. Additionally, EGLA-TRELLO-000453 shows how the content downloaded was for 24hrs. A plurality of media assets is shown by “downloading playlists” as depicted by EGLA-TRELLO-00481. Including album covers and other multimedia assets (e.g. EGLA-TRELLO-000570) or EGLA-TRELLO-000588 where the */song/L_2129124/showCoverORgenericCover/size_103_574.jpg* is retrieved.

CLEARSTONEIP

	[b] obtaining content corresponding to the plurality of multimedia items from at least one source offering the content in at least one first format;	The content is downloaded in a 1st format, for example suing the com.stingray.galaxieclient.download.mediafile.MediaFileDownloadStrategy as in EGLA-TRELLO-00494. As shown at EGLA-TRELLO-000495 multiple formats are used, eg. H.264, FLAC, Mp2, and others. The 1st format could be SD (Standard definition or HD (High Definition) or any other formats in use including MPEG2VIDEO and H.264. (EGLA-TRELLO-000129)
	[c] rendering a web page by a browser using the content;	In the MC-EGLA-000033 indicates the use of an HTML "video specification" that needs to be rendered by a browser. Indeed, the html is stored with PNG files, as shown at EGLA-TRELLO-000569 all items stored. Including, EGLA-TRELLO-00572 shows the website www.galaxie.ca and the URI playerAPI/operator/operatorList?t=…. With ah HTTP Response of 200, and JSEESIONID. Therefore a browser uses a cookie, as shown SET-COOKIE. For example the link http://mediafile.galaxie.ca/data/000/050/200/000050200610 still provides a cover, when rendered by a browser.  Additionally, the url http://covers.galaxie.ca/stong/G:435275/001/showCoveronGenericCover/... Similarly, at EGLA-TRELLO-000632 at 2015-10-08 the Ads URL was not open by the [MediaGenerator] module, which is part of GalaxieStillPicGenerator. As shown at EGLA-TRELLO-000594, a Grails servers is used to serve the files hence a browser is required to retrieve them.

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	[d] generating a temporal sequence of screen captures of the rendered web page, where each screen capture defines all the content of the web page at a given time, and at least two adjacent screen captures illustrate a dynamic change of at least a portion of the content over time;	The GalaxieStillPicGenerator captures screens that includes a "Logo File", "Ads URL" to generate a /data/video_realtime/0161735.tar file at EGLA-TRELLO-000632. As shown also at EGLA-TRELLO-000648 the class <SimpleVideoLoader> contains a videopath as /data/video_linear/AV_MP2_15K and pointing to the ffmpeg-path with MPEG2VIDEO encoding. The EGLA-TRELLO-000484. Shows that "Available Generators: 0, wait Time: 00:000:18:232595, Gen Time: 00:00:08:1241410" Smilarly, at EGLA-TRELLO-000494 as shown the MediaDownloader failed with /data/video/linear/AV_30_MP2_12M/amb2117908.m2v. The "AudioEngine no playout since Oct 6" ticket indicates that "GalaxieStillPicGenerator" threw an error when "Generating new /data/video_realtime/0161735.tar" The same GalaxieStillPicGenerator insinuates that "Still Picts" are captured from the screens rendered and then passed to the AudioEngineand StillPic Generator as shown at MC-EGLA-000336 which is sent via RAM. Dr. Shamos's (Stingray's expert testified) that: "if the Galaxie StillPic Generator deposits data in RAM and Ubiquicast audio engine retrieves it from RAM, there is no transmission" The "Data Packets" as depicted by the order indicates that "the data packets between the Audio Engine and Still Pic Generator because …" which means that the HTML is passed to the Still Pic Generator and the Audio engine.

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	[e] assembling the at least one media stream using the temporal sequence of screen captures; and	The function "GalaxieAudioEngine" contains the Multiplexer as shown at line 2016-02-04 08:52:00 at EGLA-TRELLO-000488. The audio engine and the temporal sequence of screen captures are assembled to geneate a /data/video output. AS shown by GalaxieStillPicGenerator at EGLA-TRELLO-000515 by assembling the asset, which in this case an INVALID_TRACK_ERROR message is presented as part of the AudioEngine. The StillPic Generator log, shows that an error occurs when the MediaGenerator cannot find the "Logo file" and the "Ads URL". The UbiquiCAst v4.3.3. executes AudioEngine as a service and the RPM for the software is located at EGLA-TRELLO-000374. The proper name is GalaxieAudioEngien as located in the Ubiquicast at /opt/GalaxieAudioEngine at EGLA-TRELLO-000461. The multiplexer module as part of GalaxieAudioEngine shows that assembling the "at least one media stream" at EGLA-TRELLO-000488 *2016-02-04 08:52:00: [ERROR] bin/GalaxieAudioEngine : Multiplexer::StopWorking()+0x47* *2016-02-04 08:52:00: [ERROR] bin/GalaxieAudioEngine : Multiplexer::StartWorking()+0x2a7* *2016-02-04 08:52:00: [ERROR] bin/GalaxieAudioEngine : Chain::StartWorking()+0x4e* *2016-02-04 08:52:00: [ERROR] bin/GalaxieAudioEngine : MainController::StartChains()+0x78* *2016-02-04 08:52:00: [ERROR] bin/GalaxieAudioEngine : MainController::Start()+0x9* *2016-02-04 08:52:00: [ERROR] bin/GalaxieAudioEngine : GalaxieAudioEngine::Start()+0x65* *2016-02-04 08:52:00: [ERROR] bin/GalaxieAudioEngine : main()+0x1f* As shown in EGLA-TRELLO-000384 shows how the generation.stillPicStrategyClassName=*com.stingray.galaxie.stillpic.impl.StillPicDrawerFFmpegStrategy…..*
	[f] providing the at least one media stream to the content provider for broadcast on the broadcast media channel.	The Ubiquicast generate a /data/fina/188/18882328 file for example with a PID and PCT, as part of the mediafile_metadata field with uri, as shown at EGLA-TERROR-000497. The use of PID and PMT is the use of a Transport Stream (TS) that can be broadcasted to the cable tv network. As shown at EGLA-TRELLO-00050 the Multip Program Transport Stream can be used with a Multicast IP Address 239.51.100.4:1234 with AAC audio at 128Kbps, which is the configuration used for OSE. For OSE2, 100 channels + ambience are confirued using the Multicast Addresses and ports 225.11.0.10 and 11010 as shown at EGLA-TRELLO-000066. A similar configuration at EGLA-TRELLO-000081 shows a multicast IP at 239.19.23.4:5000 And other examples at EGLA-TRELLO-000382. 52 SPTS for OSE2 are shown at EGLA-TRELLO-000454.
2	The method of claim 1, wherein the obtaining comprises:	

CLEARSTONEIP

	retrieving, for each of the plurality of multimedia items, at least one audio file corresponding to an audio component of the multimedia item and a plurality of screen captures corresponding to a video component of the multimedia item.	By retrieving the audio file, or TRACK as shown at EGLA-TRELLO-000497. EGLA-TRELLO-000515. Many citates at EGLA-TRELLO-0000158 as "Song Queue Alarm" Or song queue empty at EGLA-TRELLO-000516. At EGLA-TRELLO-000629 shows how the INVALID_TRACK_ERROR occurs and the FlacDecoder (Flac is an audio engine). The configuration templates retrieve an audio file as shown by EGLA-TRELL-000545 as "Audio+OSE2 MPEG-2+data" for example. As shown at EGLA-TRELLO-000548 show an error via "Audio PID underrun cause by corrupted audio asset" the asset is retrieved from the uri /data/final/188/18882328 for example. At least one audio file as shown at EGLA-TRELLO-000475, as the ticket says "Audio Codec should be AC3 96Kbs or 128Kbps, Stereo" Similarly, EGLA-TRELLO-000476 shows how audio MPEG 160Kbps. In the error message as shown at EGLA-TRELLO-0000482 shows how the PID=651 and Audio Buffer which indicates the use of an audio file.
3	The method of claim 2, wherein the generating comprises:	
	combining the plurality of screen captures and the at least one audio file to create each of the plurality of multimedia items.	Once the screens are captured and retrieved, a song is played with the screen with an Artist Name and Title as EGLA-TRELLO-000588 *[PLAYING] <Entry Event="12" Type="Playing" Category="020" Id="1123" Title="Veinte anos" Artist="Buena Vista* *[NEXT] <Entry Event="13" Type="Not Played" Category="M17" Id="1372" Title="Eres Mi Cancion" Artist="Rubén*
4	The method of claim 2, wherein the retrieving of the plurality of screen captures comprises obtaining the plurality of screen captures from a playback of a video on the at least one webpage.	The generated output is stored at /data/video_realtime/… that corresponds to a webpage where the artist album, title, and backgrounds are stored (EGLA-TRELLO-000632).
5	The method of claim 4, wherein the combining of the plurality of screen captures comprises metadata corresponding to at least one of a song title, an artist, and a music genre.	The logs indicate that "TTA" are stored including category or genre, title, and artist (EGLA-TRELLO-000524). *<Entry Event="11" Type="Played" Category="209" Id="1377" Title="Sorry" Artist="Justin Bieber" Album="Pur* *<Entry Event="12" Type="Playing" Category="204" Id="5537" Title="This Could Be Love " Artist="Borgeous &* *<Entry Event="13" Type="Not Played" Category="212" Id="9127" Title="Only 1" Artist="The Aston Shuffle fe…>*
6	The method of claim 1, further comprising:	

CLEARSTONEIP

	identifying the at least one webpage based on a channel identifier associated with the broadcast media channel.	A POSITA will know that a webpage has to exists that loads all the coverpages, and TTA information retrieved from the metadata.
7	The method of claim 1, further comprising:	
	querying the content provider to determine the second format, wherein the second format corresponds to a Moving Picture Experts Group (MPEG) format.	MPEG2Video format and MPEG Frames are used. Service ID, PMT and Audio PID are part of the MPEG standard. See EGLA-TRELLO-000547. EGLA-TRELLO-000548, EGLA-TRELLO-000551, EGLA-TRELLO-000557. EGLA-TRELLO-000635, EGLA-TRELLO-000642
8	The method of claim 3, further comprising:	
	[a] detecting a change at the at least one webpage corresponding to at least one of the plurality of multimedia items;	The detection occurs when switching from one song to the next, as the page then switches the "Next" being played to be the "Playing" and updates the "Next" song to play. See 10[e] of the '441 Patent. This occurs in the UbiquiCast by two ways: • As the playlist changes, all the assets can be regenerated using the GalaxieStillPicGenerator, • As the next song is set and the cache does not have the contents, GalaxieStillPicGenerator will generate the new assets for new songs. See claims 10[e], 10[c] and Claim 1[e] of the '441 Patent .

CLEARSTONEIP

	[b] in response to detecting the change, retrieving a new plurality of screen captures from the at least one webpage for the at least one of the plurality of multimedia items; and	In response to AmazonSQS messages, then follows to download the cover page, Title, Artist and other metadata. As shown at EGLA-TRELLO-000588. Upon the Playlist switches from Id=1123 to 1372, then new Covers are downloaded either from the cache or from the web as shown at EGLA-TRELLO-000582 As such, the webpage with the Ads URL, logos, and others is regenerated. *This was seen today across all servers at the same time:* *{code}* *[ERROR] Cache - internal error: expected to get a state from key [/song/L 2129124/showCoverORgenericCover/size_103_574.jpg]* *[ERROR] Cache - internal error: expected to get a state from key [/song/L 1835012/showCoverORgenericCover/size_103_574.jpg]* *{code}* *Below is the snippet from that time:* *{code}* *2016-05-20 07 24 30,837 INFO [SQSMetadataPush] - [014] Push success* *2016-05-20 07 24 30,925 INFO [SQSMetadataPush] - [189] Pushing file to SQS: /data/metadata/GX189_NT.xml* *<Playlist DeviceId="accesscommunication1" FileName="GX189_NT.xml" Now="Fri May 20 07 24 30 2016" TimezoneId="America/Regina">* *2016-05-20 07 24 31,053 INFO [SQSMetadataPush] - [189] Push success* *2016-05-20 07 24 31,059 INFO [SQSMetadataPush] - [042] Pushing file to SQS: /data/metadata/GX42_NT.xml* *<Playlist DeviceId="accesscommunication1" FileName="GX42_NT.xml" Now="Fri May 20 07 24 31 2016" TimezoneId="America/Regina">* *[PLAYING] <Entry Event="12" Type="Playing" Category="020" Id="1123" Title="Veinte anos" Artist="Buena Vista* *[NEXT] <Entry Event="13" Type="Not Played" Category="M17" Id="1372" Title="Eres Mi Cancion" Artist="Rubén*

CLEARSTONEIP

	[c] reassembling the at least one of the plurality of multimedia items using the new plurality of screen captures to yield an updated multimedia item.	Hence, by updating the new page the GalaxieAudioEngine receives the images from GalaxieStillPicGenerator and multiplexes the new video stream at /data/video_realtime/* for example. As shown at EGLA-TRELLO-000632. *AudioEngine stillpic log:* *{quote}* *...* *2015-10-08 11:21:26,941 INFO [GalaxieStillPicGenerator] - Generating new /data/video_realtime//0161735.tar* *2015-10-08 11:21:26,941 ERROR [MediaGenerator] - Could not read Logo file* *2015-10-08 11:21:26,942 ERROR [MediaGenerator] - Could not read Ads URL Too many open files* *2015-10-08 11:21:26,942 ERROR [MediaGenerator] - High level exception: Too many open files* *2015-10-08 11:21:26,943 ERROR [GalaxieStillPicGenerator] - Could not generate fallback for /data/video_realtime//0161735.tar, deleting output file* *{quote}*
9	The method of claim 1, wherein the content provider is a cable television operator or a satellite television operator.	The list of cable operators such as Liberty, Rogers (EGLA-TRELLO-000642). Other operators are shown at EGLA-TRELLO-000543, including TIGO-ES, CableMAS, SogeTel, Tigo-CR1, etc.
10	The method of claim 1, wherein providing the at least one media stream to the content provider comprises streaming the at least one media stream to an MPEG multiplexer associated with the content provider.	An MVPD or a Cablle/Satellite Operator uses a a multiplexer to “mix” all the channels that content providers sell to consumers. E.g. ESPN, FOX, 50 Music Channels, etc[1]. The Device Proposal does not permit MVPDs to offer their services consistent with the content licenses and retransmission consent requirements under which they acquire distribution rights. For example, using native architectures or apps, MVPDs may assure that programming is kept in the right neighborhood, such as a news channel placed in a news “neighborhood” or a premium service kept adjacent to its multiplex channels. They may assure that search returns do not place a programmer next to an X-rated offering. Under the Device Proposal, the MVPD cannot fulfill these requirements. The Device Proposal now acknowledges this lack of protection, but declines to advance a proposal that respects these licensing conditions. Instead, the proposal now suggests that all aspects of the numbering, grouping and presentation of channels be defined by FCC regulation rather than marketplace arrangements that reflect copyright license conditions, retransmission agreements, local laws and expectations, and an MVPD’s own decisions about how to present services—decisions that are protected by the First Amendment.

[1] FCC Record: A Comprehensive Compilation of Decisions, Reports, Public Notices, and Other Documents of the Federal Communications Commission of the United States. (2015). United States: Federal Communications Commission.

CLEARSTONEIP

11	The method of claim 1, further comprising:	
	provisioning, on at least one server, at least one virtual machine for performing the receiving, obtaining, generating, assembling, and providing.	Dr. Shamos, Expert witness for Stingray testified that "*hus one does not transmit to the other and the StillPic Generator virtual machine cannot act as 'receiving system' for the Audio"* at MC-EGLA-000337 and Dr. Shamos's (Stingray's expert testified) that: "if the Galaxie StillPic Generator deposits data in RAM and Ubiquicast audio engine retrieves it from RAM, there is no transmission" The "Data Packets" as depicted by the order indicates that "the data packets between the Audio Engine and Still Pic Generator because …" which means that the HTML is passed to the Still Pic Generator and the Audio engine.
12	A system comprising:	
	[a] at least one processor;	The UbiquiCAST has a processor, as shown by the specifications, the servers are DELL computers that are shipped to all cable operators. See EGLA-TRELLO-000618
	[b] a computer-readable storage medium having stored therein instructions which, when executed by the processor, cause the at least one processor to perform operations comprising:	Use of a RAID Controller and HDDs is shown at EGLA-TRELLO-000619, or as shown at EGLA-TRELLO-000636. The storage includes the directory with /data and
	[c] receive, from a content provider, a request for at least one media stream for playback on a broadcast media channel, the at least one media stream including a plurality of multimedia items of different types;	The content provider, e.g. Cable Operator.
	[d] retrieve, from a cloud based service, multimedia content corresponding to the plurality of multimedia items, the multimedia content in a first format;	AWS and SQS are cloud-based services where the plurality of elements is stored, including SQSMetaDataPush as shown at EGLA-TRELLO-000521.
	[e] render a web page by a browser using the multimedia content;	See Claim 1[c]

CLEARSTONEIP

	[f] generate a temporal sequence of screen captures of the rendered web page, where each screen capture defines all the content of the web page at a given time, and at least two adjacent screen captures illustrate a dynamic change of at least a portion of the content over time;	See Claim 1[d]
	[g] merge the temporal sequence screen captures with the at least one audio file to create the media stream; and	See Claim 1[e] and 1[f]. Merge means multiplex the temporal sequence of screens via (GalaxieStillPic and AudioEngine) and an audio file (E.g. AC-3). Dr. Shamos's (Stingray's expert testified) that: "if the Galaxie StillPic Generator deposits data in RAM and Ubiquicast audio engine retrieves it from RAM, there is no transmission" The "Data Packets" as depicted by the order indicates that "the data packets between the Audio Engine and Still Pic Generator because …" which means that the HTML is passed to the Still Pic Generator and the Audio engine. See MC-EGLA-000337.
	[h] Send the media stream to the content provider.	The content is broadcasted via a Multicast address as an SPTS or MPTS. As shown at Claim 1[f].
13	The system of claim 12, further comprising:	
	retrieve a video from the cloud based service, wherein the screen captures correspond to a plurality of static images obtained from the video.	See MC-EGLA-000337 says that "*Thus one does not transmit to the other and the StillPic Generator virtual machine cannot act as 'receiving system' for the Audio Engine." (Dkt. No. 188-5 at 12 (using ECF page number).)"* Additionally, the sam-cache and other servers are stored in Amazon, that is a cloud-based service provider with Amazon EC2.
14	The system of claim 12, further comprising:	
	select the multimedia content from the cloud based service based on a music genre associated with the broadcast media channel.	See Claim 26[h] of the '441 Patent and 10[g[
15	The system of claim 12, wherein the request comprises a request for a plurality of multimedia streams for playback on a plurality of broadcast media channels.	The requests use a plurality of multimedia streams for playback on a plurarity of broadcast media channels. As a plurality of channels, e.g. Rock, Jazz are broadcasted or multicasted to different SPTS and MPTS address See Claim 1[i] of the '441 Patent.

CLEARSTONEIP

16	The system of claim 12, wherein the media stream is sent to a broadcast internet protocol (IP) address associated with the content provider.	See the Multicast addresses as shown at Claim 1[i] of the '441 Patent Chart.
17	A non-transitory computer-readable storage medium having stored therein instructions which, when executed by a processor, cause the processor to perform operations comprising:	
	[a] receiving, from a content provider, a request for at least one media stream for playback on a broadcast media channel, wherein the at least one media stream includes a plurality of multimedia items of different types;	See Claim 10[b] of the '441 Patent.
	[b] obtaining content corresponding to the plurality of multimedia items from at least one source offering the content in at least one first format;	The content is retrieved from the Sam-Cache e.g. Playlists and the /data is uploaded from the file-streaming-service.mtl.stingray.com. See Claim 10[c] of '441 Patent.
	[c] rendering a web page by a browser using the content;	See Claim 10[d] of '441 Patent.
	[d] generating a sequence of screen captures of the rendered web page, where each screen capture defines all of the content of the web page at a given time, and at least two adjacent screen captures illustrate a dynamic change of at least a portion of the content over time;	See Claim 10[e] of '441 Patent
	[e] assembling the at least one media stream using the sequence of screen captures; and	See Claim 10[f] of '441 Patent
	[f] providing the at least one media stream to the content provider for broadcast on the broadcast media channel.	See Claim 10[g] of '441 Patent
18	The non-transitory computer-readable storage medium of claim 17, wherein the obtaining comprises retrieving, for each of the plurality of multimedia items, at least one audio file corresponding to an audio component of the multimedia item and a plurality of screen captures corresponding to a video component of the multimedia item; and	See claim 10[e] of '441 Patent

CLEARSTONEIP

	wherein the assembling comprises combining the plurality of screen captures and the at least one audio file.	At least one AC-3, AAC, or MPEG2-Layer 1 audio file. For example, at EGLA-TRELLO-0000495 the AC3 96Kbps and 128Kbps Stereo is used to generate the UbiquiCAST stream that is being broadcasted. As shown at EGLA-TRELLO-0000001 the playlist contains at least one audio file. *<Entry Event="00" Type="Played" Category="200" Id="7054" Title="Stingray ID.045.Eclectic Electronic.v1.w* *<Entry Event="01" Type="Played" Category="211" Id="2467" Title="Calm Down" Artist="Katy B, Four Tet &amp* *<Entry Event="02" Type="Played" Category="201" Id="7825" Title="Blind Heart" Artist="Cazzette & Terr* *<Entry Event="03" Type="Played" Category="212" Id="9133" Title="Lies" Artist="Jane XØ" Album="" Composer* *<Entry Event="04" Type="Played" Category="211" Id="7174" Title="You're Good but I'm Better" Ar* *<Entry Event="05" Type="Played" Category="203" Id="7490" Title="Latch" Artist="Disclosure feat. Sam Smit* And, the GalaxieAudioEngine works (see EGLA-TRELLO-0000484) on: *Westman2 audioengine had suddenly stopped streaming on error since Jan 28th.* *Both servers are at ubi version 2.9.1 on Dec 21st (CUSTTS-705)* *Timezone is also incorrect "America/Toronto" whereas primary has "America/Winnipeg"* *{quote}* *2016-01-28 16:23:04: [INFO] [030] 61 seconds of videos needed, adding 7 videos of 10 seconds.* *2016-01-28 16:23:04: [INFO] [MC0083] Available generators: 0, Wait time: 00:00:18.232695, Gen time: 00:00:08.124140* *2016-01-28 16:23:04: [INFO] [MC0083] Loading from video folder "/data/video_realtime/205/2059052.tar" with type TTA* As shown at EGLA-TRELLO-0000488, the GalaxieAudioEngine works on the audio and the StillPic to combine the images generated. *2016-02-04 08:52:00: [ERROR] /usr/lib64/libGalaxieFramework.so : ASI_Output::Stop()+0x16b* *2016-02-04 08:52:00: [ERROR] bin/GalaxieAudioEngine : Multiplexer::StopWorking()+0x47* *2016-02-04 08:52:00: [ERROR] bin/GalaxieAudioEngine : Multiplexer::StartWorking()+0x2a7* *2016-02-04 08:52:00: [ERROR] bin/GalaxieAudioEngine : Chain::StartWorking()+0x4e* *2016-02-04 08:52:00: [ERROR] bin/GalaxieAudioEngine : MainController::StartChains()+0x78* *2016-02-04 08:52:00: [ERROR] bin/GalaxieAudioEngine : MainController::Start()+0x9* *2016-02-04 08:52:00: [ERROR] bin/GalaxieAudioEngine : GalaxieAudioEngine::Start()+0x65*

CLEARSTONEIP

		2016-02-04 08:52:00: [ERROR] bin/GalaxieAudioEngine : main()+0x1f *2016-02-04 08:52:00: [ERROR] /lib64/libc.so.6 : libc_start_main()+0xf4*
19	The non-transitory computer-readable storage medium of claim 17, wherein the at least one media stream corresponds to at least one of an HTTP live stream (HLS), an HTTP playlist, and a Real-time Streaming Transport (RTSP) stream.	The HTTP Live Stream url was https://ott-linear-channels.stingray.com/hls/stirr/133.m3u8 These are generated from the UbiquiCast or a Virtualized version of the Ubiquicast.
20	The non-transitory computer-readable storage medium of claim 17, storing additional instructions which, when executed by the processor, result in operations comprising:	Not sufficient evidence in trello.com
	[a] detect a network failure affecting connectivity with the at least one website; and	
	[b] in response, provide a previously recorded media stream to the content provider.	

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21	The non-transitory computer-readable storage medium of claim 17, wherein assembling the at least one media stream comprises inserting at least one MPEG packet including metadata corresponding to the multimedia item.	The HTTP Live Streaming assets listed online include the link shown at EGLA-TRELLO-000668 and by extracting the stored files from the HTTP Live streaming (HLS) each “segement” is stored as part of the live stream, and each segment is about 7 seconds, as the HTTP Live Streaming protocol requires. (See EGLA-TRELLO-000669 and https://datatracker.ietf.org/doc/html/rfc8216) The HTTP Live Stream url was https://ott-linear-channels.stingray.com/hls/stirr/133.m3u8 By examining the Transport Stream segment in that MPEG Packet, the metadata in the 3rd PID is retrieved. ffmpeg -i https://ott-linear-channels.stingray.com/155/master_768x432_500kbps_5450191.ts ffmpeg version 6.0 Copyright (c) 2000-2023 the FFmpeg developers built with Apple clang version 14.0.0 (clang-1400.0.29.202) configuration: --prefix=/usr/local/Cellar/ffmpeg/6.0 --enable-shared --enable-pthreads --enable-version3 --cc=clang --host-cflags= --host-ldflags= --enable-ffplay --enable-gnutls --enable-gpl --enable-libaom --enable-libaribb24 --enable-libbluray --enable-libdav1d --enable-libmp3lame --enable-libopus --enable-librav1e --enable-librist --enable-librubberband --enable-libsnappy --enable-libsrt --enable-libsvtav1 --enable-libtesseract --enable-libtheora --enable-libvidstab --enable-libvmaf --enable-libvorbis --enable-libvpx --enable-libwebp --enable-libx264 --enable-libx265 --enable-libxml2 --enable-libxvid --enable-lzma --enable-libfontconfig --enable-libfreetype --enable-frei0r --enable-libass --enable-libopencore-amrnb --enable-libopencore-amrwb --enable-libopenjpeg --enable-libspeex --enable-libsoxr --enable-libzmq --enable-libzimg --disable-libjack --disable-indev=jack --enable-videotoolbox libavutil 58. 2.100 / 58. 2.100 libavcodec 60. 3.100 / 60. 3.100 libavformat 60. 3.100 / 60. 3.100 libavdevice 60. 1.100 / 60. 1.100 libavfilter 9. 3.100 / 9. 3.100 libswscale 7. 1.100 / 7. 1.100 libswresample 4. 10.100 / 4. 10.100 libpostproc 57. 1.100 / 57. 1.100 Input #0, mpegts, from 'https://ott-linear-channels.stingray.com/155/master_768x432_500kbps_5450191.ts': Duration: 00:00:01.94, start: 81111.572856, bitrate: 743 kb/s Program 1 Stream #0:0[0x1e1]: Video: h264 (High) ([27][0][0][0] / 0x001B), yuv420p(tv, progressive), 768x432 [SAR 1:1 DAR 16:9], 29.97 fps, 29.97 tbr, 90k tbn Stream #0:1[0x1ec](und): Audio: aac (LC) ([15][0][0][0] / 0x000F), 48000 Hz, stereo, fltp, 128 kb/s **Stream #0:2[0x1f6]: Data: timed_id3 (ID3 / 0x20334449)** As shown the Channels are #0:0 with h264 video, Channel 0:1 the AAC audio, and 0:2 is the timed_id3 tags.

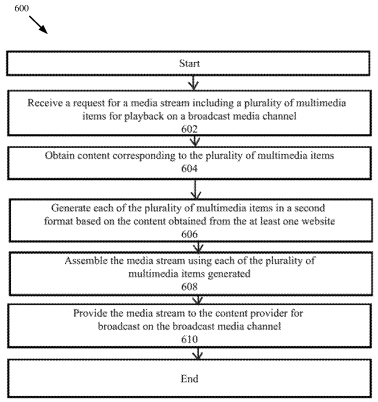
EXHIBIT 25

February 8, 2024
Performed by: EDWIN

10524002

US10524002B2

US10524002B2	
Assignee:	HERNANDEZ MONDRAGON EDWIN A
Title:	Method, system, and apparatus for multimedia content delivery to cable TV and satellite operators
Filing Date:	2018-10-05
Publication Date:	2019-12-31
Inventor:	HERNANDEZ-MONDRAGON EDWIN A
Earliest Priority:	2014-12-22
Maint. Status:	2023-12-27 Payment of Maintenance Fee, 4th Yr, Small Entity.; Surcharge for late Payment, Small Entity.



Abstract: Systems, methods, and computer-readable media for delivering multimedia content from the cloud to cable operators are disclosed. A device located at the cable headend or implemented in the cloud can receive a request for at least one media stream for playback on a broadcast media channel. Content corresponding to a plurality of multimedia files in the media stream can be obtained from the internet or a cloud based service. The content can be used to generate the multimedia files in a format that is compatible with the cable operator. The multimedia files can be used to assemble the at least one media stream which can be provided to the cable operator for broadcast on the broadcast media channel.

Claims:

1	A computer-implemented method, comprising:	
	[a] receiving, from a content provider, a request for at least one media stream for playback on a broadcast media channel, wherein the at least one media stream includes a plurality of multimedia items of different types;	See Claim 10[b] from the ‘441 Patent
	[b] obtaining content corresponding to the plurality of multimedia items from at least one source offering the content in at least one first format;	The content is retrieved from the Sam-Cache e.g. Playlists and the /data is uploaded from the file-streaming-service.mtl.stingray.com. See Claim 10[c] of ‘441 Patent.
	[c] rendering a web page by a browser using the content;	See Claim 10[d] of ‘441 Patent.

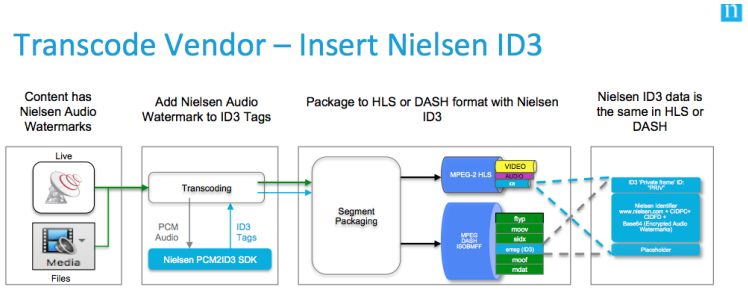
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	[c] generating a temporal sequence of screen captures of the rendered web page, where each screen capture defines all the content of the web page at a given time, and at least two adjacent screen captures illustrate a dynamic change of at least a portion of the content over time;	See Claim 10[e] of '441 Patent
	[d] assembling the at least one media stream using the temporal sequence of screen captures; and	See Claim 10[f] of '441 Patent
	[e] providing the at least one media stream to the content provider for broadcast on the broadcast media channel;	See Claim 10[g] of '441 Patent
	[f] wherein the at least one media stream corresponds to at least one of an HTTP live stream (HLS), an HTTP playlist, and a Real-time Streaming Transport (RTSP) stream; and	At leaste one media stream is HLS for example EGLA-TRELLO-000668.
	[g] wherein the web page is rendered in parallel in multiple threads.	See EGLA-TRELLO-0000532 where the /bin/GalaxieAduioEngine loads boost:detail_thread_data indicating that all rendering occurs in parallel in several threads. EGLA-TRELLO-000539 confirms that in case of some errors. Lowering the number of threads to 1 could help the GalaxieClient.
2	The method according to claim 1, wherein the at least one media stream is interacted with MPEG two way control messages.	N/A
3	The method according to claim 1, wherein MPEG messages are sent to a service provider via a unicast address.	The application use a unicast address, where MPEG TS in the HLS (HTTP Live Stream Link are used)
4	A computer-implemented method, comprising:	

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	[a] receiving, from a content provider, a request for at least one media stream for playback on a broadcast media channel, wherein the at least one media stream includes a plurality of multimedia items of different types;	See Claim 10[b] from the '441 Patent
	[b] obtaining content corresponding to the plurality of multimedia items from at least one source offering the content in at least one first format;	The content is retrieved from the Sam-Cache e.g. Playlists and the /data is uploaded from the file-streaming-service.mtl.stingray.com. See Claim 10[c] of '441 Patent.
	[c] rendering a web page by a browser using the content;	See Claim 10[d] of '441 Patent.
	[d] generating a temporal sequence of screen captures of the rendered web page, where each screen capture defines all the content of the web page at a given time, and at least two adjacent screen captures illustrate a dynamic change of at least a portion of the content over time;	See Claim 10[e] of '441 Patent.
	[e] assembling the at least one media stream using the temporal sequence of screen captures; and	See Claim 10[f] of '441 Patent.
	[f] providing the at least one media stream to the content provider for broadcast on the broadcast media channel;	See Claim 10[g] of '441 Patent.

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	[g] wherein assembling the at least one media stream comprises inserting at least one MPEG packet including metadata corresponding to the multimedia item; and	The insert of metadata for example NielsenEncoderComponent in the MPEG Packet includes metadata for example, title and artist information, as shown at EGLA-TRELLO-000511 *<AudioStream id="aud" abstract="true" source="aacAudioSystem"/>* *<AudioSystem id="aacAudioSystem" scheduler="defaultScheduler" scope="prototype" depends-on="globals" >* *<EncoderComponent file="conf/ac3.xml"/>* *<XFadeController DefaultPlayoutDecibelLevel="-27"/> <!-- WARNING: adjust ac3 dial norm consequently -->* *</AudioSystem>{code}* *AudioSystem Sample with NielsenWatermarkEncoderComponent :* *{code:xml}* *<AudioStream id="aud1" abstract="true" source="AudioSystem"/>* *<AudioSystem id="AudioSystem" scheduler="Scheduler1" depends-on="globals" scope="prototype">* *<EncoderComponent file="conf/ac3.xml" />* *<NielsenWatermarkEncoderComponent config="nwc" scope="prototype"/>* *<XFadeController />* *</AudioSystem>{code}* The Nielsen Project Canada Clients is listed as part of EGLA-TRELLO-0000664. The NielsenTranscode “Insert Nielsend ID3” an MPEG2 field is added as shown at EGLA-TRELLO-000665 

	[h] wherein the web page is rendered in parallel in multiple threads.	The web-page is rendered in multiple threads as shown at EGLA-TRELLO-0000488 shows the threads used by the GalaxieFrameworklso which indeed refers to the GalaxieAduioEngine module. *2016-02-04 08:52:00: [ERROR] /usr/lib64/libGalaxieFramework.so : SignalTranslator<SegmentationFault>::SingletonTranslator::SignalHandler(int)+0x25* *2016-02-04 08:52:00: [ERROR] /usr/java/latest/jre/lib/amd64/server/libjvm.so [0x2b042e739f59]* *2016-02-04 08:52:00: [ERROR] /usr/java/latest/jre/lib/amd64/server/libjvm.so : JVM_handle_linux_signal()+0xb6* *2016-02-04 08:52:00: [ERROR] /lib64/libpthread.so.0 [0x356d40eca0]* *2016-02-04 08:52:00: [ERROR] /lib64/libpthread.so.0 : pthread_mutex_lock()+0* *2016-02-04 08:52:00: [ERROR] /usr/local/lib64/libboost_thread.so.1.43.0 : boost::thread::get_thread_info() const+0x1c* *2016-02-04 08:52:00: [ERROR] /usr/local/lib64/libboost_thread.so.1.43.0 : boost::thread::join()+0x26* *2016-02-04 08:52:00: [ERROR] /usr/lib64/libGalaxieFramework.so : ASI_Output::Stop()+0x68* *2016-02-04 08:52:00: [ERROR] bin/GalaxieAudioEngine : Multiplexer::StopWorking()+0x47* *2016-02-04 08:52:00: [ERROR] bin/GalaxieAudioEngine : Multiplexer::StartWorking()+0x2a7* *2016-02-04 08:52:00: [ERROR] bin/GalaxieAudioEngine : Chain::StartWorking()+0x4e* *2016-02-04 08:52:00: [ERROR] bin/GalaxieAudioEngine : MainController::StartChains()+0x78* *2016-02-04 08:52:00: [ERROR] bin/GalaxieAudioEngine : MainController::Start()+0x9* *2016-02-04 08:52:00: [ERROR] bin/GalaxieAudioEngine : GalaxieAudioEngine::Start()+0x65* *2016-02-04 08:52:00: [ERROR] bin/GalaxieAudioEngine : main()+0x1f* *2016-02-04 08:52:00: [ERROR] /lib64/libc.so.6 : libc_start_main()+0xf4*
5	The computer-implemented method of claim 4, wherein the at least one media stream is interacted with MPEG two way control messages.	There is no evidence on trello.com of this limitation.

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6	The computer-implemented method of claim 4, wherein MPEG messages are sent to a service provider via a unicast address.	The MPEG files are generated as .ts in the HLS format . As shown: curl "https://ott-linear-channels.stingray.com/v1/master /734895816ccb1e836f8c1e81f772244d9be0077c/155/ ../../../manifest/734895816ccb1e836f8c1e81f772244d9be0077c/155/ad3eeffe-c42a-4aa5-b3c7-f7b3224c3bb5/0.m3u8" #EXTM3U #EXT-X-VERSION:3 #EXT-X-TARGETDURATION:7 #EXT-X-MEDIA-SEQUENCE:5450182 #EXT-X-DISCONTINUITY-SEQUENCE:71 #EXT-X-PROGRAM-DATE-TIME:2023-12-14T21:30:39.512Z #EXTINF:6.006, https://stirr.ott-channels.stingray.com/155/master_768x432_500kbps_5450182.ts #EXTINF:6.006, https://stirr.ott-channels.stingray.com/155/master_768x432_500kbps_5450183.ts #EXTINF:6.006, https://stirr.ott-channels.stingray.com/155/master_768x432_500kbps_5450184.ts #EXTINF:6.006, https://stirr.ott-channels.stingray.com/155/master_768x432_500kbps_5450185.ts #EXTINF:6.006, https://stirr.ott-channels.stingray.com/155/master_768x432_500kbps_5450186.ts #EXTINF:6.006, https://stirr.ott-channels.stingray.com/155/master_768x432_500kbps_5450187.ts #EXTINF:6.006, https://stirr.ott-channels.stingray.com/155/master_768x432_500kbps_5450188.ts #EXTINF:6.006, https://stirr.ott-channels.stingray.com/155/master_768x432_500kbps_5450189.ts #EXTINF:6.006, https://stirr.ott-channels.stingray.com/155/master_768x432_500kbps_5450190.ts #EXTINF:1.9019, https://stirr.ott-channels.stingray.com/155/master_768x432_500kbps_5450191.ts ffmpeg -i https://ott-linear-channels.stingray.com/155/master_768x432_500kbps_5450191.ts ffmpeg version 6.0 Copyright (c) 2000-2023 the FFmpeg developers built with Apple clang version 14.0.0 (clang-1400.0.29.202)

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		configuration: --prefix=/usr/local/Cellar/ffmpeg/6.0 --enable-shared --enable-pthreads --enable-version3 --cc=clang --host-cflags= --host-ldflags= --enable-ffplay --enable-gnutls --enable-gpl --enable-libaom --enable-libaribb24 --enable-libbluray --enable-libdav1d --enable-libmp3lame --enable-libopus --enable-librav1e --enable-librist --enable-librubberband --enable-libsnappy --enable-libsrt --enable-libsvtav1 --enable-libtesseract --enable-libtheora --enable-libvidstab --enable-libvmaf --enable-libvorbis --enable-libvpx --enable-libwebp --enable-libx264 --enable-libx265 --enable-libxml2 --enable-libxvid --enable-lzma --enable-libfontconfig --enable-libfreetype --enable-frei0r --enable-libass --enable-libopencore-amrnb --enable-libopencore-amrwb --enable-libopenjpeg --enable-libspeex --enable-libsoxr --enable-libzmq --enable-libzimg --disable-libjack --disable-indev=jack --enable-videotoolbox libavutil 58. 2.100 / 58. 2.100 libavcodec 60. 3.100 / 60. 3.100 libavformat 60. 3.100 / 60. 3.100 libavdevice 60. 1.100 / 60. 1.100 libavfilter 9. 3.100 / 9. 3.100 libswscale 7. 1.100 / 7. 1.100 libswresample 4. 10.100 / 4. 10.100 libpostproc 57. 1.100 / 57. 1.100 Input #0, mpegts, from 'https://ott-linear-channels.stingray.com/155/master_768x432_500kbps_5450191.ts': Duration: 00:00:01.94, start: 81111.572856, bitrate: 743 kb/s Program 1 Stream #0:0[0x1e1]: Video: h264 (High) ([27][0][0][0] / 0x001B), yuv420p(tv, progressive), 768x432 [SAR 1:1 DAR 16:9], 29.97 fps, 29.97 tbr, 90k tbn Stream #0:1[0x1ec](und): Audio: aac (LC) ([15][0][0][0] / 0x000F), 48000 Hz, stereo, fltp, 128 kb/s **Stream #0:2[0x1f6]: Data: timed_id3 (ID3 / 0x20334449)** As shown the Channels are #0:0 with h264 video, Channel 0:1 the AAC audio, and 0:2 is the timed_id3 tags.
7	A system, comprising:	

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	[a] a multicast server configured to generate parameters relating to at least one of video content, image content and audio content, and configured to output the parameters via MPEG outputs;	The Ubiquicast is configured as a multicast server, as shown at EGLA-TRELLO-000066, the multicast server is configured to deliver 100 OSE2 Channels (music plus cover, title, current song, next song) in video plus music content, and video content only as MPEG outputs. (Audio-format MPEG-2) MPTS *Multicast address(es) & port(s) 225.11.0.10 and 11010* *Source IP 192.168.30.10/24* *Note: The Multicast address(es), port(s) & Source IP can be identical or different on the primary and back server.* *Maximum video bit rate Bit rate of the audio should be less 38.8MB in total.*
	[b] a caching server communicatively coupled to the multicast server, and configured to receive and store the parameters, **[c]** create a temporal sequence of screen captures of a rendered web page, where each said screen capture defines content of the rendered web page at a given time, and at least two adjacent screen captures in the temporal sequence illustrate a dynamic change of at least a portion of the video content, image content or audio content over time, **[d]** assemble the temporal sequence of screen captures, and provide at least one of the video content, image content and audio content to the multicast server for generating a multicast stream with MPEG encoded video and audio; and	See Claim 1]a] and 10[a] of the '441 patent the server is either virtualized or not, and configured to store parameters See Claim 10[e] at '441 Patent, See Claim 13[c] and Claim 10[e]

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	[e] a monitoring system configured to maintain generation of video and audio files, even in failure cases.	The M/Monit service is use for example: • Song queue is empty at EGLA-TRELLO-000516 • As part of the EGLA-TRELLO-000108, to create an image for the multicast server. the "Update monit" is the 18th step • EGLA-TRELLO-000530 shows that GalaxieUpdater uses UBI_MONIT_LINUX "to facilitate alert updates" including for various components "*e.g. stillpicgenerator, ubimetaserver, ubiquicast, etc.*" M/Monit is a service used as shown at EGLA-TRELLO-0000666 and "M/Monit uses Monit as an agent and can manage and monitor all your hosts and services. M/Monit can start a service if it does not run, restart a service if it does not respond and suspend a service if it uses too much resources"
8	The system according to claim 7, further comprising multiple servers for load balancing and fault-tolerance.	The system of claim 7 has a primary and backup server as part of the ubiquicast device, see EGLA-TRELLO-0000458
9	The system according to claim 7, wherein the multicast server is selected to communicate a multicast stream available for a broadband network.	Sling TV and other services are broadband networks where UbiquiCAST is installed (See EGLA-TRELLO-0006667). 'Stingray Group, a music, media, and technology company, has announced the launch of free, ad-supported TV channels with eleven major OTT providers: Comcast Xfinity (US), DistroTV (US), Freebie TV (US), Freecast (US), MX Player (US and India), Peacock (US), Redbox (US), Samsung TV Plus (UK and Germany), STIRR (US), STV (UK) and Vizio Watch Free (US). These distribution agreements grow Stingray's potential reach by over 200 million viewers. "
10	The system according to claim 7, wherein the video content is encoded in a video streaming format so as to generate a unicast stream.	A unicast stream is known as an HTTP stream, for example HTTP live stream, Stingray uses HTTP Live Stream to deliver its content. For example the link is generated from https://ott-linear-channels.stingray.com/v1/master/734895816ccb1e836f8c1e81f772244d9be0077c/155/master.m3u8 A unicast stream. .

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11	The system according to claim 7, wherein the system generates audio MPEG files and add metadata in an MPEG frame.	The MPEG files are generated as .ts in the HLS format . As shown: curl "https://ott-linear-channels.stingray.com/v1/master /734895816ccb1e836f8c1e81f772244d9be0077c/155/ ../../../manifest/734895816ccb1e836f8c1e81f772244d9be0077c/155/ad3eeffe-c42a-4aa5-b3c7-f7b3224c3bb5/0.m3u8" #EXTM3U #EXT-X-VERSION:3 #EXT-X-TARGETDURATION:7 #EXT-X-MEDIA-SEQUENCE:5450182 #EXT-X-DISCONTINUITY-SEQUENCE:71 #EXT-X-PROGRAM-DATE-TIME:2023-12-14T21:30:39.512Z #EXTINF:6.006, https://stirr.ott-channels.stingray.com/155/master_768x432_500kbps_5450182.ts #EXTINF:6.006, https://stirr.ott-channels.stingray.com/155/master_768x432_500kbps_5450183.ts #EXTINF:6.006, https://stirr.ott-channels.stingray.com/155/master_768x432_500kbps_5450184.ts #EXTINF:6.006, https://stirr.ott-channels.stingray.com/155/master_768x432_500kbps_5450185.ts #EXTINF:6.006, https://stirr.ott-channels.stingray.com/155/master_768x432_500kbps_5450186.ts #EXTINF:6.006, https://stirr.ott-channels.stingray.com/155/master_768x432_500kbps_5450187.ts #EXTINF:6.006, https://stirr.ott-channels.stingray.com/155/master_768x432_500kbps_5450188.ts #EXTINF:6.006, https://stirr.ott-channels.stingray.com/155/master_768x432_500kbps_5450189.ts #EXTINF:6.006, https://stirr.ott-channels.stingray.com/155/master_768x432_500kbps_5450190.ts #EXTINF:1.9019, https://stirr.ott-channels.stingray.com/155/master_768x432_500kbps_5450191.ts ffmpeg -i https://ott-linear-channels.stingray.com/155/master_768x432_500kbps_5450191.ts ffmpeg version 6.0 Copyright (c) 2000-2023 the FFmpeg developers built with Apple clang version 14.0.0 (clang-1400.0.29.202)

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		configuration: --prefix=/usr/local/Cellar/ffmpeg/6.0 --enable-shared --enable-pthreads --enable-version3 --cc=clang --host-cflags= --host-ldflags= --enable-ffplay --enable-gnutls --enable-gpl --enable-libaom --enable-libaribb24 --enable-libbluray --enable-libdav1d --enable-libmp3lame --enable-libopus --enable-librav1e --enable-librist --enable-librubberband --enable-libsnappy --enable-libsrt --enable-libsvtav1 --enable-libtesseract --enable-libtheora --enable-libvidstab --enable-libvmaf --enable-libvorbis --enable-libvpx --enable-libwebp --enable-libx264 --enable-libx265 --enable-libxml2 --enable-libxvid --enable-lzma --enable-libfontconfig --enable-libfreetype --enable-frei0r --enable-libass --enable-libopencore-amrnb --enable-libopencore-amrwb --enable-libopenjpeg --enable-libspeex --enable-libsoxr --enable-libzmq --enable-libzimg --disable-libjack --disable-indev=jack --enable-videotoolbox libavutil 58. 2.100 / 58. 2.100 libavcodec 60. 3.100 / 60. 3.100 libavformat 60. 3.100 / 60. 3.100 libavdevice 60. 1.100 / 60. 1.100 libavfilter 9. 3.100 / 9. 3.100 libswscale 7. 1.100 / 7. 1.100 libswresample 4. 10.100 / 4. 10.100 libpostproc 57. 1.100 / 57. 1.100 Input #0, mpegts, from 'https://ott-linear-channels.stingray.com/155/master_768x432_500kbps_5450191.ts': Duration: 00:00:01.94, start: 81111.572856, bitrate: 743 kb/s Program 1 Stream #0:0[0x1e1]: Video: h264 (High) ([27][0][0][0] / 0x001B), yuv420p(tv, progressive), 768x432 [SAR 1:1 DAR 16:9], 29.97 fps, 29.97 tbr, 90k tbn Stream #0:1[0x1ec](und): Audio: aac (LC) ([15][0][0][0] / 0x000F), 48000 Hz, stereo, fltp, 128 kb/s **Stream #0:2[0x1f6]: Data: timed_id3 (ID3 / 0x20334449)** As shown the Channels are #0:0 with h264 video, Channel 0:1 the AAC audio, and 0:2 is the timed_id3 tags.
12	The system according to claim 7, wherein the system generates MPEG metadata that is interacted with two way broadcast TV systems.	There is no evidence of this element on trello.com
13	A computer-implemented method, comprising:	

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	[a] receiving, from a content provider, a request for at least one media stream for playback on a broadcast media channel, wherein the at least one media stream includes a plurality of multimedia items of different types;	See Claim 10[b] from the '441 Patent
	[b] obtaining content corresponding to the plurality of multimedia items from at least one source offering the content in at least one first format;	The content is retrieved from the Sam-Cache e.g. Playlists and the /data is uploaded from the file-streaming-service.mtl.stingray.com. See Claim 10[c] of '441 Patent.
	[c] rendering a web page by a browser using the content;	See Claim 10[d] of '441 Patent.
	[d] generating a temporal sequence of screen captures of the rendered web page, where each screen capture defines all the content of the web page at a given time, and at least two adjacent screen captures illustrate a dynamic change of at least a portion of the content over time;	See Claim 10[e] of '441 Patent
	[e] assembling the at least one media stream using the temporal sequence of screen captures; and	See Claim 10[f] of the '441 Patent
	[f] Providing the at least one media stream to the content provider for broadcast on the broadcast media channel;	See Claim 10[g] of the '441 Patent

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	[g] wherein the at least one media stream corresponds to at least one of an HTTP live stream (HLS), an HTTP playlist, and a Real-time Streaming Transport (RTSP) stream; and	The MPEG files are generated as .ts in the HLS format . As shown: curl "https://ott-linear-channels.stingray.com/v1/master /734895816ccb1e836f8c1e81f772244d9be0077c/155/ ../../../manifest/734895816ccb1e836f8c1e81f772244d9be0077c/155/ad3eeffe-c42a-4aa5-b3c7-f7b3224c3bb5/0.m3u8" #EXTM3U #EXT-X-VERSION:3 #EXT-X-TARGETDURATION:7 #EXT-X-MEDIA-SEQUENCE:5450182 #EXT-X-DISCONTINUITY-SEQUENCE:71 #EXT-X-PROGRAM-DATE-TIME:2023-12-14T21:30:39.512Z #EXTINF:6.006, https://stirr.ott-channels.stingray.com/155/master_768x432_500kbps_5450182.ts #EXTINF:6.006, https://stirr.ott-channels.stingray.com/155/master_768x432_500kbps_5450183.ts #EXTINF:6.006, https://stirr.ott-channels.stingray.com/155/master_768x432_500kbps_5450184.ts #EXTINF:6.006, https://stirr.ott-channels.stingray.com/155/master_768x432_500kbps_5450185.ts #EXTINF:6.006, https://stirr.ott-channels.stingray.com/155/master_768x432_500kbps_5450186.ts #EXTINF:6.006, https://stirr.ott-channels.stingray.com/155/master_768x432_500kbps_5450187.ts #EXTINF:6.006, https://stirr.ott-channels.stingray.com/155/master_768x432_500kbps_5450188.ts #EXTINF:6.006, https://stirr.ott-channels.stingray.com/155/master_768x432_500kbps_5450189.ts #EXTINF:6.006, https://stirr.ott-channels.stingray.com/155/master_768x432_500kbps_5450190.ts #EXTINF:1.9019, https://stirr.ott-channels.stingray.com/155/master_768x432_500kbps_5450191.ts ffmpeg -i https://ott-linear-channels.stingray.com/155/master_768x432_500kbps_5450191.ts ffmpeg version 6.0 Copyright (c) 2000-2023 the FFmpeg developers built with Apple clang version 14.0.0 (clang-1400.0.29.202)

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		configuration: --prefix=/usr/local/Cellar/ffmpeg/6.0 --enable-shared --enable-pthreads --enable-version3 --cc=clang --host-cflags= --host-ldflags= --enable-ffplay --enable-gnutls --enable-gpl --enable-libaom --enable-libaribb24 --enable-libbluray --enable-libdav1d --enable-libmp3lame --enable-libopus --enable-librav1e --enable-librist --enable-librubberband --enable-libsnappy --enable-libsrt --enable-libsvtav1 --enable-libtesseract --enable-libtheora --enable-libvidstab --enable-libvmaf --enable-libvorbis --enable-libvpx --enable-libwebp --enable-libx264 --enable-libx265 --enable-libxml2 --enable-libxvid --enable-lzma --enable-libfontconfig --enable-libfreetype --enable-frei0r --enable-libass --enable-libopencore-amrnb --enable-libopencore-amrwb --enable-libopenjpeg --enable-libspeex --enable-libsoxr --enable-libzmq --enable-libzimg --disable-libjack --disable-indev=jack --enable-videotoolbox libavutil 58. 2.100 / 58. 2.100 libavcodec 60. 3.100 / 60. 3.100 libavformat 60. 3.100 / 60. 3.100 libavdevice 60. 1.100 / 60. 1.100 libavfilter 9. 3.100 / 9. 3.100 libswscale 7. 1.100 / 7. 1.100 libswresample 4. 10.100 / 4. 10.100 libpostproc 57. 1.100 / 57. 1.100 Input #0, mpegts, from 'https://ott-linear-channels.stingray.com/155/master_768x432_500kbps_5450191.ts': Duration: 00:00:01.94, start: 81111.572856, bitrate: 743 kb/s Program 1 Stream #0:0[0x1e1]: Video: h264 (High) ([27][0][0][0] / 0x001B), yuv420p(tv, progressive), 768x432 [SAR 1:1 DAR 16:9], 29.97 fps, 29.97 tbr, 90k tbn Stream #0:1[0x1ec](und): Audio: aac (LC) ([15][0][0][0] / 0x000F), 48000 Hz, stereo, fltp, 128 kb/s **Stream #0:2[0x1f6]: Data: timed_id3 (ID3 / 0x20334449)** As shown the Channels are #0:0 with h264 video, Channel 0:1 the AAC audio, and 0:2 is the timed_id3 tags.

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	[h] wherein the web page is rendered in parallel in virtual instances or virtual machines.	The web-page is rendered in an ubiquicast and generated in virtual machines as shown in Claim 13[c] of the '441 Patent. Additionally, Dr. Shamos, Stingray's expert testified that "At MC-EGLA-000337 Dr. Shamos, Expert for Stingay testified that such storage was a virtual machine (emphasis added): *Within an exhibit to Dr. Shamos' expert report, Dr. Shamos stated that "[t]he StillPic Generator and the Audio engine are the same piece of software. Thus one does not transmit to the other and the* ***StillPic Generator virtual machine*** *cannot act as 'receiving system' for the Audio Engine." (Dkt. No. 188-5 at 12 (using ECF page number).)"*

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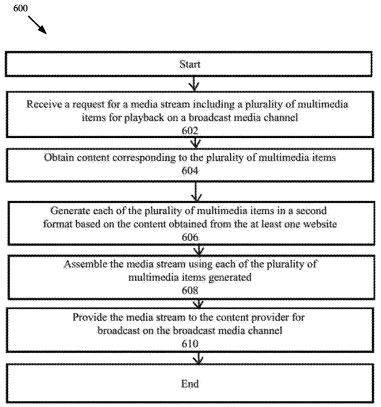
EXHIBIT 26

February 8, 2024
Performed by: EDWIN

US 11,140,441

US11140441B2

US11140441B2	
Assignee:	EDWIN A HERNANDEZ-MONDRAGON
Title:	Method, system, and apparatus for multimedia content delivery to cable TV and satellite operators
Filing Date:	2019-12-30
Publication Date:	2021-10-05
Inventor:	HERNANDEZ-MONDRAGON EDWIN A
Earliest Priority:	2014-12-22
Maint. Status:	2020-01-22 Entity status set to Small.



Abstract: Systems, methods, and computer-readable media for delivering multimedia content from the cloud to cable operators are disclosed. A device located at the cable headend or implemented in the cloud can receive a request for at least one media stream for playback on a broadcast media channel. Content corresponding to a plurality of multimedia files in the media stream can be obtained from the internet or a cloud based service. The content can be used to generate the multimedia files in a format that is compatible with the cable operator. The multimedia files can be used to assemble the at least one media stream which can be provided to the cable operator for broadcast on the broadcast media channel.

Claims:

1	A computer implemented method, comprising:	

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	[a] creating a plurality of multimedia assets at a caching unit, for each one of the plurality of multimedia assets:	Stingray's "ubimetaserver" component as shown at EGLA-TRELLO-000521 show errors at "Cache" as follows: *[ERROR] Cache - internal error: expected to get a state from key [/song/L 2129124/showCoverORgenericCover/size_103_574.jpg] [ERROR] Cache - internal error: expected to get a state from key [/song/L 1835012/showCoverORgenericCover/size_103_574.jpg]*t Therefore, a plurality of media assets are stored in the server. Additionally, the SAM-cache is used to store playlist that at EGLA-TRELLO-000526 states that: *When servers are pointed to **Sam-Cache (sam-cacheyo3wi0hee8phaequ. stingraydigital.com),** some playlists do not download (at times, all playlists fail to download). There are no errors on the logs given that the GalaxieClient is able to Sync with SAM however no playlist XML files are seen as downloading on the logs.* (emphasis added). The primary server also contains as part of /data directory, several subdirectories that store multimedia sets at a caching unit, as shown at EGLA-TRELLO-000483. As shown, the directory /data with folders "largecache" and "oschache" and "video_realtime" *cd /opt/GalaxieAudioEngine/conf/Aster/ /usr/java/jdk1.6.0_29/bin/native2ascii service.properties service.properties2 (might have to change java version in the path) mv service.properties2 service.properties cd /data mv largecache largecache_bck6 mv oscache oscache_bck6 mv video_realtime video_realtime_bck6 mkdir largecache mkdir oscache mkdir video_realtime chmod 777 largecache chmod 777 oscache chmod 777video_realtime service audioengine start* The caching proxy is defined by the Software/Config entry at EGLA-TRELLO-000535, as "Caching Proxy UbiMetaServer"

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		Supporter les Update de Software/Config pour *Caching Proxy UbiMetaServer* *Still pic (peut être juste la config) GalaxieClient* *** autres (avec un path absolu)*

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	[b] determining that there is sufficient storage space for the multimedia asset at the caching unit;	At EGLA-TRELLO-000466, the ubiquicast checks if a maximum track is used, in this error MaxExpected is 720 *Wed Apr 4 23:48:01 2012: /data/playlists/GX121_NT/20120405.xml: NORMAL ERROR - Application tried populate a trackList with more tracks than the maximum expected daily tracks. MaxExpected: 720* A check to validate the maximum expected daily track translates to sufficient storage, hence 720 is the maximum value configured by this server. Additionally, and as shown at EGLA-TRELLO-000496 shows how the limit of open files is set and raised by the system as well as the number of maximum connections. The number open files are needed to ensure sufficient space is used to store multimedia assets for all the channels in use. For example at EGLA-TRELLO-000415 the following error is thrown if too many open files are found by the MediaGenerator which is part of GalaxieStillPicGenerator. *015-10-08 11:21:26,942 ERROR [MediaGenerator] - High level exception: Too many open files* The GalaxieStillPicGenerator checks if too many files are opened and then deletes the file if that's the case, to save space.(EGLA-TRELLO-000632) • Generating a tar file at /data/video_realtime/0161735.tar • The Logo file needs to be loaded via HTTP • The Ads URL needs to be loaded via HTTP • If too many open files are opened then an error is thrown and a deletion is next. *2015-10-08 11:21:26,941 INFO [GalaxieStillPicGenerator] - Generating new /data/video_realtime//0161735.tar* *2015-10-08 11:21:26,941 ERROR [MediaGenerator] - Could not read Logo file* *2015-10-08 11:21:26,942 ERROR [MediaGenerator] - Could not read Ads URL Too many open files* *2015-10-08 11:21:26,942 ERROR [MediaGenerator] - High level exception: Too many open files* *2015-10-08 11:21:26,943 ERROR [GalaxieStillPicGenerator] - Could not generate fallback for /data/video_realtime//0161735.tar, deleting output file*

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		{quote}
	[c] generating a channel identifier for the multimedia asset;	At EGLA-TRELLO-000521 an identifier is used, for example "ID" values of 1123, 1372, 0435, 1341 can be observed at this list that is part of the SQSMetaPush. As shown below: *[PLAYING] <Entry Event="12" Type="Playing" Category="020" Id="1123" Title="Veinte anos" Artist="Buena Vista* *[NEXT] <Entry Event="13" Type="Not Played" Category="M17" Id="1372" Title="Eres Mi Cancion" Artist="Rubén* *[PLAYING] <Entry Event="12" Type="Playing" Category="042" Id="0435" Title="Love of a Lifetime" Artist="Fireh* *[NEXT] <Entry Event="13" Type="Not Played" Category="042" Id="1341" Title="No Mistakes" Artist="Patty Smy*

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	[d] retrieving from a cloud service a plurality of media files to be included in the multimedia asset including a media identifier for each one of the media files;	The media files are pushed or retrieved from the cloud, including the media identifier and stored in a local database as shown: • EGLA-TRELLO-000526 shows that "Some playlists do no download at time…. " this Is using the server with domain name sam-cache-vo3wi0hee8phaequ.stingraydigital.com • EGLA-TRELLO-000548 show that the local database in the server include download_time as fields in the dabe sotre for each of the /data/final/…. Assets. In this case the query executed was "*select * from mediafile_metadata where uri like "%/data/final/188/1882328%"* that is a media file that is due to the error called "INVALID_TRACK_ERROR" using the FLAC_STREAM_DECODER where FLAC is a multimedia encoding type. • At EGLA-TRELLO-000548 the notes show that to solve the error: "*I removed the asset and prompted a re-download. Will need to restart the audioengine"* • At EGLA-TRELLO-000613 show that "There are no assets missing so the GCT is downloading just fine…. " • At EGLA-TRELLO-000494 shows that "INFO | jvm 1 | 2018/08/04 17:34:31 | 2018-08-04 17:34:31,514 ERROR [MediaFileDownloader] – Failed to download media file : /data/video_linear/AV_30_MP2_12M/amb2117908.m2v" In fact, the evidence shows that "com.stingray.galaxieclient.download.mediafile.MediaFileDownloadStrategy.downloadFile *com.stingray.galaxieclient.download.mediafile.MediaFileDownloadStrategy.downloadFile(MediaFileDownloadStrategy.java:156) INFO | jvm 1 | 2018/08/04 17:34:31 | at com.stingray.galaxieclient.download.mediafile.MediaFileDownloader.sync(MediaFileDownloader.java:95) INFO | jvm 1 | 2018/08/04 17:34:31 | at com.stingray.galaxieclient.download.SyncTask.run(SyncTask.java:42) INFO | jvm 1 | 2018/08/04 17:34:31 | at java.util.concurrent.Executors$RunnableAdapter.call(Executors.java:471) INFO | jvm 1 | 2018/08/04 17:34:31 | at java.util.concurrent.FutureTask.run(* • At EGLA-TRELLO-000550 shows that "*Source for asset ID 2013033 downloaded from Hilversum 1 UbiquICAST and confirmed faulty."*

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