UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

Case No.: 1:24-cv-21226-RAR

DR. EDWIN A. HERNANDEZ, and EGLA CORP.,

JURY TRIAL DEMANDED

Plaintiffs,

v.

STINGRAY GROUP INC. f/k/a STINGRAY DIGITAL GROUP, INC. STINGRAY MUSIC USA, INC., MOOD MEDIA LLC f/k/a MOOD MEDIA CORPORATION, AT&T ENTERPRISES, LLC f/k/a AT&T Corp., MILLICOM INTERNATIONAL SERVICES, LLC, BLUE STREAM COMMUNICATIONS, LLC dba BLUE STREAM FIBER, and DOES 1-100,

Defendants.

_____/

SECOND AMENDED COMPLAINT

Plaintiffs, Dr. Edwin A. Hernandez, ("Dr. Hernandez") and EGLA CORP. ("EGLA CORP") (Dr. Hernandez and EGLA CORP, collectively "Plaintiffs"), by their undersigned counsel, brings this action against Defendants Stingray Group, Inc. f/k/a Stingray Digital Group, Inc. ("Stingray Group"), Stingray Music USA, Inc. ("Stingray Music") (Stingray Group and Stingray Music, collectively "Stingray"), Mood Media LLC f/k/a Mood Media Corporation ("Mood Media"), and AT&T Enterprises, LLC f/k/a AT&T Corp. ("AT&T"), Millicom International Services, LLC "(Millicom"), Blue Stream Communications, LLC d/b/a Blue Stream Fiber ("Blue Stream") and DOES 1-100 (Stingray, Mood Media, AT&T, Millicom, Blue Stream and DOES 1-100, collectively "Defendants"), and state:

INTRODUCTION

1. This case arises from the theft of Plaintiffs' proprietary technologies (trade secrets and patented technology) used in the distribution of music channels to millions of subscribers in the United States and around the world, included but not limited to "Stingray Music" service to subscribers of AT&T, Millicom, Blue Stream, and DOES 1-100.

2. From about 2012 through 2014, Dr. Hernandez developed technology to deliver audio and video content using cloud-based platforms and mobile applications using secure remote servers. During this time, this technology was maintained as Dr. Hernandez's trade secrets. Later, some of this technology was disclosed in Dr. Hernandez's patent applications, which ultimately resulted in patents-at-issue, namely, U.S. Patent Nos. 10,127,074; 10,524,002 and 11,140,441 ("Asserted Patents") (**Exhibits 1-3**). However, prior to the publication of the patented technology on June 30, 2016, they remained Dr. Hernandez's trade secrets. Technology that was not disclosed in the Asserted Patents remains Dr. Hernandez's trade secrets.

3. The Stingray defendants acquired unauthorized access to Dr. Hernandez's proprietary technology in connection with the acquisition of certain assets of Defendant Mood

Media, who was using Dr. Hernandez's proprietary technology under an agreement with Dr. Hernandez's company EGLA CORP. Stingray's unauthorized use of Dr. Hernandez's trade secrets and patented technology allowed Stingray to replace competitors such as Music Choice to become the leading provider of music services to Cable TV operators with music channels offerings to over 700 operators worldwide (**Exhibit 4** at 2[1]) at Dr. Hernandez's expense.

4. Ultimately, from 2014 to 2024, Stingray increased its revenues from C$15M to C$100.4M[2] per quarter, and increased its customer base to at least 413 operators, including Defendants AT&T, Millicom, and Blue Stream (**Exhibit 4** at 2), generating US $37.1 million per quarter in revenues the United States.[3]

5. In December 2014, Dr. Hernandez filed for patent protection for certain of his technological innovations and has received approval of 94 claims spread across 4 U.S. patents and 8 claims in an European Patent covering 17 jurisdictions, patents that are infringed or were infringed by Defendants.

BACKGROUND

6. In or around 2012, a company called "DMX Music" was having financial troubles and used approximately 50 desktop computers to broadcast music-only content to cable operator affiliates. DMX relied on satellite delivery systems and antiquated hardware and software. DMX management at the time met with Dr. Hernandez to see if something could be done. Dr. Hernandez suggested a different approach for DMX's music delivery, including a project to develop an "alternative" solution to satellite delivery. Dr. Hernandez proposed developing a new technology using cloud-based platforms and mobile applications, provided that this technology remained

[1] Page numbers refer to actual document page/PDF page numbers as opposed to the internal page numbers.
[2] https://www.digrin.com/stocks/detail/RAY-A.TO/earnings
[3] https://corporate.stingray.com/wp-content/uploads/2024/02/press_release_q324_en.pdf

exclusively Dr. Hernandez's proprietary technology. DMX agreed. As DMX didn't have a budget, Dr. Hernandez began developing this technological platform in multiple phases and multiple products, and DMX agreed to provide its clients as "testbed" for those technological solutions.

7. However, before disclosing any technical information, Dr. Hernandez and his company EGLA CORP entered a Non-Disclosure Agreement ("NDA") on March of 2012 with DMX (**Exhibit 5**), and subsequently disclosed confidential and proprietary strategies, architecture documents, and software strategies to be used by Dr. Hernandez.

8. The NDA explicitly recited that "[n]o licenses or rights under any patent, copyright, or trade secret" were granted or were implied with the agreement.

9. Dr. Hernandez's research and development included a web-based cloud platform, that DMX called DMX2GO, as well as prototype audio box devices for commercial music customers, mobile applications including "Mediamplify Music," and servers to replace satellite delivery with internet-based transport for the existing audio-only platform.

10. The associated web-based products and mobile application technologies developed by Dr. Hernandez were demonstrated to DMX and DMX used those products to revamp sales.

11. Beginning in 2013, Dr. Hernandez hired services to host his streaming platform, including iWeb (**Exhibit 6**), Equinix data centers (**Exhibit 7**), and other providers.

12. As part of the development of the technology, Dr. Hernandez shipped several servers that contained music and audio-only prototype solution and installed at cable TV head-end operators including CABLEMAS, CABLEVISION, AXTELTV, ENCOMPASS, and others.

13. Among the many proprietary disclosures, Dr. Hernandez presented to then DMX Media General Managers and executives, Gustavo Tonelli and Alejandro Cacciola, confidential

technical documents, server plans, technology updates, access to cable operators that were needed in order to perfect and test Dr. Hernandez's developments.

14. To replace antiquated hardware encoders and wiring, a server-based solution was envisioned by Dr. Hernandez to deploy a software-defined system to each Cable Operator. To solve this problem, Dr. Hernandez proposed a software-defined solution to replace hardware encoders and satellite delivery, which was novel and innovative at the time.

15. In or around March of 2012, DMX was acquired by Defendant Mood Media for $86.1M cash (**Exhibit 8**) and the nascent relationship between DMX and Dr. Hernandez was formalized with Mood Media. Post-acquisition Mood Media continued using the DMX brand and platform ("Mood Media/DMX"), which included several of Dr. Hernandez's ongoing projects and intellectual property using web-based technologies and mobile applications, including DMX2GO (Web-based), Mediamplify Music Mobile App, DMX2GO Widgets, and other Set-Top-Box projects.

16. Dr. Hernandez was the main software developer, architect, solo entrepreneur, test engineer, and sole provider of technologies for Mood Media, and started deploying several versions of his software and conducted testing and integration at different major Cable TV systems (e.g., DirectTV in California, Cablevision in Mexico City) where Mood Media/DMX had clients to test the solutions using real head ends that connected end-users with Set Top Boxes (STB).

17. As noted, the first version of Dr. Hernandez's software was music-only and did not deliver visual assets. It was not until mid-2013, when Dr. Hernandez developed his first prototype, wrote a specification, and implemented a python-based software to manage HTML-based screen enhancements for Cable TV and Satellite Operators. Dr. Hernandez finalized all this work in or around May 2014.

18. As explained below, Defendants used, and continue to use, Dr. Hernandez's trade secrets and patented technology to offer streaming audio and music services to millions of subscribers in the U.S. and worldwide.

PARTIES

19. Plaintiff Dr. Edwin A. Hernandez, a native of Honduras, is a resident of Coral Springs, Florida. Dr. Hernandez is an inventor and entrepreneur that has owned a technology incubator and accelerator, called EGLAVATOR, from 1997 to 2023. The EGLAVATOR was a 10,000 sq ft. facility was in Boca Raton, FL. Dr. Hernandez was Fulbright scholar and named inventor and owner of 15 issued U.S. and foreign patents. Dr. Hernandez spends his time helping entrepreneurs to launch technological startups with technical leadership, oversight, and capital. Dr. Hernandez is a member of the board of advisers, a reviewer for international journals and technical publications, and is the biggest shareholder of several entities, and main founder of EGLA CORP and the inventor of the patents-at-issue.

20. Plaintiff EGLA CORP is a Florida corporation with its principal place of business at 4890 NW 101st Ave Coral Springs, FL. EGLA CORP is owned by Dr. Hernandez and his parents (Dr. Alcides Hernandez and Reina Gladys Hernandez), and the company has an exclusive license to the technologies owned by Dr. Hernandez.

21. On information and belief, Defendant Stingray Group is a Canadian corporation with its principal place of business at 730 Wellington Street, Montreal, Quebec, Canada H3C 1T4. Stingray Group currently has over 250 employees across the world. Stingray Group is doing business in the United States, in the State of Florida, and in this judicial district.

22. On information and belief, Defendant 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 is doing business in the United States, in the State of Florida, and in this judicial district.

23. On information and belief, Defendant Mood Media LLC f/k/a Mood Media Corporation is a Texas corporation located at 2100 S. IH 35, Suite 201, Austin, TX 78704. Mood Media is doing business in the United States, in the State of Florida, and in this judicial district.

24. On information and belief, Defendant AT&T Enterprises, LLC f/k/a AT&T Corp. is a New York corporation with offices at 20445 Biscayne Blvd, Suite H1, Aventura, FL, 33180 and its principal place of business at One AT&T Way, Bedminster, New Jersey 07921-0752. AT&T Corp.'s registered agent for service is CT Corporation System, 28 Liberty Street, New York, New York, 10005. AT&T is doing business in the United States, in the State of Florida, and in this judicial district.

25. On information and belief, Defendant Millicom International Services, LLC is a Florida limited liability company with a principal place of business in Miami, FL at 255 Giralda Ave, Suite 800 Coral Gables, FL 33134. Millicom is doing business in the United States, in the State of Florida, and in this judicial district.

26. On information and belief, Defendant Blue Stream Communications, LLC is a Delaware limited liability company with a principal place of business at 12409 NW 35 St Coral Springs, FL 33065. Blue Stream is doing business in the United States, in the State of Florida, and in this judicial district.

27. Plaintiff is unaware of the true names or capacities, whether individual, corporate, associate, or otherwise of defendants DOES 1 through 100, inclusive. Plaintiff therefore sues said defendants by such fictitious names. Plaintiff will amend this Complaint to show their true names or capacities when the same have been ascertained.

JURISDICTION AND VENUE

28. This is an action for (a) trade secret misappropriation under both the Defend Trade Secrets Act, now codified at 18 U.S.C. § 1836 et seq. ("DTSA"), and Florida Uniform Trade Secrets Act, Fl. Stat. § 201 *et seq*., (b) patent infringement under the patent laws of the United States, 35 U.S.C. § 100 *et seq*., (c) breach of contract, (d) unjust enrichment, (e) fraud, and (f) unfair competition pursuant to Florida Deceptive and Unfair Trade Practices Act (or "FDUTPA"), *et seq*.

29. This Court has subject matter jurisdiction over patent claims in this action pursuant under 18 U.S.C. § 1836(c) (actions arising under the DTSA), 28 U.S.C. §1338(a) (patent infringement), 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § 1367 (supplemental jurisdiction); and the doctrines of ancillary and pendent jurisdiction.

30. This Court has personal jurisdiction over Defendants and venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because Dr. Hernandez resides in this district and a substantial part of the events giving rise to the claims occurred in this district, pursuant to 28 U.S.C. § 1400(b) because the domestic Defendants have a regular place of business in this District and committed acts of infringement here, and pursuant to 28 U.S.C. § 1391(c)(3) as to foreign Defendant Stingray Group. Dr. Hernandez is informed and believes and alleges thereon that Defendant Stingray Group is a foreign corporation with no offices in the United States, and Defendant Millicom International Services, LLC is a Florida limited liability company with a principal place of business in Miami, FL at 255 Giralda Ave, Suite 800 Coral Gables, FL 33134. Defendant Blue Stream Communications, LLC is a Delaware limited liability company with a principal place of business at 12409 NW 35 St Coral Springs, FL 33065. Dr. Hernandez is informed and believes and alleges thereon that these Defendants have committed acts of infringement in this District, including using, distributing, promoting, marketing, selling, offering

for sale, importing, and/or advertising their infringing products and services in or to this District and/or to businesses and individuals in this District. Dr. Hernandez is further informed and believes and thereon alleges that these Defendants derive substantial revenue from using, distributing, promoting, marketing, selling, offering for sale, importing of their infringing products and services in, or to users in, this District. Dr. Hernandez is informed and believes and thereon alleges that Defendants Stingray Music and Mood Media do business in the state of Florida and this judicial district, a substantial part of the events giving rise to the claims against Stingray Music and Mood Media occurred in this district, and harmed Plaintiffs who are residents of Florida and reside in this judicial district.

FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

A. Dr. Hernandez's Background

31. Dr. Hernandez is a Ph.D in Computer Engineering from the University of Florida and an inventor of 15 issued patents. Dr. Hernandez is an innovator and in 2017 founded his startup accelerator and incubator, the EGLAVATOR. His incubator has developed and invented multiple devices and launched several companies. Dr. Hernandez continues to develop technological advancements and recently filed for a new patent application for MEVIAOS, a decentralized multimedia operating system, the evolution of MEVIA.

32. Among his patent portfolios, Dr. Hernandez has licensed some of his inventions to mobile carriers, phone manufacturers, including Verizon Wireless, through his company Mobility Workx, LLC.

33. Dr. Hernandez also works as an expert witness for patent, trade secret, and technology intellectual property cases, and has testified in trial, and deposed dozens of times for high-profile litigations.

34. The patents at issue here do not include many aspects of Dr. Hernandez's streaming platform and R&D existing around 2013 and 2014, including Dr. Hernandez's work on:

A. iWEB cloud and multimedia streaming cloud APIs and streaming for web,

B. Mobile Applications with Music Streaming and Video,

C. Multimedia CDN and Cloud Storage (e.g., Huladrive),

D. APIs for metadata and music information from the server(s) and used by the mobile applications, and

E. Music-only streaming to Cable TV operators.

These aspects remain Dr. Hernandez's trade secrets.

35. The Asserted Patents cover 94 issued claims that include streaming broadcasting of unicast and multicast systems, where the source of the generated content is HTML, multimedia files, and broadcasting platforms. In simple terms, one of the aspects of the Asserted Patents is the generation of visual representations with background images generated using web-based elements that are already used in mobile applications creating a unified user experience. The screens displayed in set top boxes or Smart TVs are generated with images, html, and styles from a web page that are displayed and broadcasted in a multicast address, which is compatible with MVPD operators (*e.g.*, AT&T, Millicom's TIGO, etc).

36. The Asserted Patents also cover the use of virtual machines, headless browsers, m3u8 streaming, fault-tolerance, MPEG-based multiplexers, use of caching units, multicast servers, unicast servers, CSS, HTTP, JSON, H.264 encoders, MPEG2Video encoders, among other innovations.

B. Dr. Hernandez's Development of his Proprietary Technology, Including his Trade Secrets

37. Since 2010, Dr. Hernandez has, and continues to, develop, architect, and implement cloud-based platforms for multimedia delivery.

38. Dr. Hernandez's technologies are required to distribute music content where, instead of having one computer per music channel, all channels are generated and encoded from a single arrangement, including backup systems, that can be implemented with 2 or 3 servers. Additionally, configuration, management, and adaptability of the system are software-driven instead of depending on hardware changes.

39. Before implementing Dr. Hernandez's technology, DMX used 50 desktop servers with ASI (Asynchronous Serial Interface) cards that were interconnected to a set of multiplexers and encoders that ultimately were delivered to a satellite system and managed by Digital Latin America (DLA) from Coral Springs, FL. In general, most of the industry used these methods, including DMX competitors Music Choice, Galaxy, and others.

40. In and around early 2010, Dr. Hernandez invested his own personal funds developing and investing in cloud platforms, a cluster-filesystem called HULADRIVE, and testbeds. These were integrated in an efficient and cost-effective way using open-source tools such as FFMPEG to work with the early-stage formats that were being developed at that time.

41. The first set of technologies developed were streamers and cloud-based systems to stream a set of music channels (*e.g.*, 100) and provide a link for web applications, mobile applications, and web-based platforms. Dr. Hernandez provided Application Programming Interfaces (API) to retrieve metadata from any of the music channels.

42. Around 2012 to 2013, Dr, Hernandez developed an audio-only broadcasting platform for cable operators and replace satellite delivery that was delivered from a server without

using hardware encoders and was compatible with cable TV Set Top Boxes. The audio-only streaming solutions was designed in several ways using several streaming protocols. The vision was to develop a new platform that integrated existing web-widgets, javascripts, and Cascade Style Sheets (CSS) to provide a graphical User Experience (UX) with metadata and high-quality music content.

43. Around 2013, Dr. Hernandez further investigated how to generate, not only audio streams, but incorporate visual components to the stream. After several iterations of the solutions were made, and several algorithms were implemented, Dr. Hernandez determined that adding visual components could also be done asynchronously but would require heavy production efforts, great amounts of bandwidth, and the off-line generation of video assets. Dr. Hernandez's vision was to use real-time video generation using HTML assets to assemble and present User Interfaces while encoding and broadcasting the audio stream in a format compatible with IPTV, Cable TV, or Satellite system. This solution was more efficient and even today is still in use.

44. In or around 2013, Dr. Hernandez notified Mood Media, under confidentiality, that he was working on a real-time solution that was going to generate on-the-fly video assets with metadata and other widgets, and broadcast to set top boxes or other IPTV systems. After multiple iterations, Dr. Hernandez found that using a headless rendering engine and incorporating web assets was going to be the way to solve a real-time solution that could be scaled.

45. Dr. Hernandez incorporated a solution relying on web user interfaces and javascript for on screen animations and updates and concluded this to be the most efficient way for real-time broadcasting visual assets to set-top-boxes was going to work. Dr. Hernandez showed the results of this solution in operation at a cable operator, Cablevision Mexico, in March 2014, but did not share any technical details as it remained Dr. Hernandez's trade secret at that time.

46. This innovative solution greatly improved head-end software and streaming management as well as music license tracking. As part of the services rendered for Mood Media, for example, Dr. Hernandez hosted in his platform all the required web-assets, music, and user interfaces that were necessary for Mood Media's services like DMX2GO or mobile applications that were being commercialized by Mood Media/DMX. As such, Dr. Hernandez's novel solution enabled a unified distribution system and shared resources across web, mobile, and cable TV.

47. From about 2013-mid-2014, Dr. Hernandez continued to work on developing proprietary technology, including creating visual components were rendered and generated on-the-fly with metadata, configurable backgrounds, and music content. In or around mid-2014, Dr. Hernandez perfected these innovations while developing his latest version of the platform's source code. Collectively, these innovations for delivering multi-media are "Dr. Hernandez's Trade Secrets."

48. Dr. Hernandez's Trade Secrets, thus include, but are not limited to, source code, HTML and XML code, functional requirement specifications, operating procedures, automation validation test scripts, equipment listings, configuration specifications, all architecture methods and systems with encodings scripts, source code to generate screens, source code implementation on how "still images" were generated by the caching unit and broadcasted using an MPEG Transport Stream, use of multicast IP Addresses, GOP sizes, audio encoders levels, and information in the Asserted Patents before their public disclosure on June 30, 2016 (*see e.g.*, **Exhibits 24-26**).[4]

[4] Plaintiffs will provide under the terms of a protective order entered in the case and at the appropriate time a specific disclosure of Dr. Hernandez's trade secrets.

49. Dr. Hernandez spent thousands of hours researching, testing, analyzing and compiling data, which ultimately lead to developing Dr. Hernandez's Trade Secrets. This compiled information included the computing resource utilization, network and processor performance, user experience and overall costs associated with various different software and system architectures, and the interplay between aspects of those various different architectures and how each contributes to such performance and costs. Based on the analysis of the research and testing data, Dr. Hernandez determined that a unique and proprietary software and system architecture to provide streaming audio and video content.

50. Dr. Hernandez's Trade Secrets derive independent economic value from not being generally known to the public or to others who can obtain economic value from its disclosure or use. Dr. Hernandez together with various members of his team performed extensive research and development, testing and trials in relation to developing Dr. Hernandez's Trade Secrets. This included work performed and know how gained over several years involving a significant investment of time and money.

51. This significant economic value of Dr. Hernandez's Trade Secrets derives from the following:

- Dr. Hernandez spent thousands of hours of research, development and testing around the world in order to develop Dr. Hernandez's Trade Secrets.
- Dr. Hernandez's Trade Secrets include source code.
- It took Dr. Hernandez and others working for him many years to develop and write source code.
- The development of the Dr. Hernandez's Trade Secrets source code required a significant investment of time and money.

52. Except for certain of Dr. Hernandez's Trade Secrets that disclosed in his published patent application June 30, 2016, his trade secrets remained secret. For example, the hardware and software were never provided to third parties without confidentiality agreements, and access to the hardware and software was strictly controlled and limited to the engineers working on it. The software is provided via a cloud server provider, which hosts software applications and simply makes the application accessible to authorized end users over the Internet. These host servers were controlled by Plaintiffs and, accordingly, the software and the source code was not known or accessible to others.

53. Throughout the development of Dr. Hernandez's technology for streaming audio and video content, all the source code and software was kept confidential pursuant to NDAs and confidentiality agreements, and all access to the servers and source code was exclusively managed by Dr. Hernandez. Dr. Hernandez personally visited several sites or hired an engineer contractor to visit the Cable Operator sites (head-ends) where his servers were going to be located to confirm servers would have adequate internet access, power, and physical security. All software and firmware updates were made using secured IP tunnels that connected using iWeb or Equinix.

54. As a result of Dr. Hernandez's security measures, access to Dr. Hernandez's confidential and proprietary technology, including his source code, was only possible if the servers and corresponding hard drives were unlawfully accessed.

C. Mood Media Induces Dr. Edwin Hernadez to Disclose its Trade Secrets to Stingray with a Fraudulent Agreement

55. During the Fall of 2013, EGLA CORP and Mood Media/DMX negotiated a term sheet agreement to license the platforms in iWeb, Equinix, mobile applications, and other web applications, and an option to include future platform development. The term sheet was signed on

December 18, 2013 with an Effective Date of January 1, 2013 (**Exhibit 9**) by Dr. Alcides Hernandez as CEO of EGLA CORP.

56. During these negotiations, Dr. Alcides Hernandez was not informed that a merger transaction was taking place behind the scenes with Stingray, and that Stingray intended to gain unauthorized access to Dr. Hernandez's Trade Secrets, including his servers, and source code, via its acquisition of Mood Media/DMX.

57. When Dr. Hernandez discovered around March 2014 that Mood Media/DMX division was being acquired by Stingray for $16M, he immediately communicated with Alejandro Cacciola (**Exhibit 11** at 5-6). As noted, Messrs. Cacciola and Tonelli were DMX Media General Managers and executives who later became executives of Stingray. However, during the negotiation with EGLA CORP before February/March 2014, despite being employed by Stingray, even appearing in industry magazines (**Exhibit 10** at 16), both executives posed as Mood Media/DMX contacts to EGLA CORP when negotiating for access and use of Dr. Hernandez's technologies.

58. By April 24, 2014, after Mood Media had consummated the $16.3M Stingray transaction, Dr. Hernandez received a letter from the Vice President of Legal for Mood Media, Melanie McCool, purporting to terminate the "term-sheet" that covered Mood Media/DMX's access to and use of Dr. Hernandez's technologies (**Exhibit 11** at 1). Ms. McCool further claimed that the "[t]echnology didn't work" and that it was not in use by Mood Media, hence such agreement was unenforceable.

59. The term sheet agreement had a duration of three years and made clear that all Intellectual Property and technology ownership was owned by Dr. Hernandez and his companies.

In fact, all servers that were installed in all cable operators contained a "End User Licensing Agreement" that prohibited any reverse engineering (**Exhibit 12** at 3).

60. As noted, in an around March 2014, Dr, Hernandez found out via an internet search that Mood Media/DMX had been sold to Stingray. However, Mood Media never notified Dr. Hernandez, much less sought authorization for Stingray to access and use his servers containing his proprietary technology. At no time did Dr. Hernandez and EGLA CORP agree to give Stingray access any of Dr. Hernandez's servers.

61. Around April 10-14, 2014, Dr. Hernandez was concerned that his server assets had been compromised and that he needed to delete and disconnect his services to avoid unauthorized access and use of his technology by Stingray, who now appeared to be controlling head-ends and customers previously licensed by Mood Media. Dr. Hernandez sent emails to Mr. Tonelli, Ms. McCool (then working for Mood Media, now working for Stingray), and others in an attempt to confirm that there was no unauthorized access and use of his technology (**Exhibit 11** at 5-6).

62. By April 2014, Mr. Tonelli was already using a @stingraydigital.com email address (**Exhibit 13** at 2), however around 2014, Mr. Tonelli wrote from his mac.com account (**Exhibit 14.1**) and "privately" stated that, by discontinuing his services to Mood Media/DMX, "MOOD will sue you for breaching the agreement without proper notice, and it will seek (and most likely get, because you don't have a case) damages for all the money STINGRAY will sue them for."

63. At about that time, as shown in Florida's Department of State Corporation records website, Sunbiz.org, Mr. Tonelli became a director of a company affiliated with Stingray, Stingray Music USA, Inc (**Exhibit 14**). In addition to Messrs. Tonelli and Cacciola, it is unknown what other Stingray personnel at that time would have had access to Dr. Hernandez's servers by virtue of their former employment by Mood Media.

64. As Dr. Hernandez later discovered in April of 2021, and shown in the **Exhibits 15 and 16**, Stingray had access to the same cable operators where Dr. Hernandez had his servers in operation. See, for example, CableMAS (**Exhibit 15** at 20), AXTEL TV (*Id.* at EGLA-TRELLO-000143), CABLE VISION (*Id.* at EGLA-TRELLO-000435, ENCOMPASS (**Exhibit 16** [11] at EGLA-TRELLO-000520).

65. On April 14, 2014, Dr. Hernandez contacted the Intellectual Property division, Department of Homeland Security (DHS) of the FBI (**Exhibit 17**) to report his concern that Stingray may have access to his servers.

66. When Dr. Hernandez raised his concerns about Stingray's possible access to his servers and thus his technology, Mr. Tonelli warranted that "STINGRAY DIGITAL has no knowledge of, nor involvement on, the specifics of MOOD MEDIA's content delivery technology - EGLA's or otherwise - nor has the intention of acquiring or learning such technology" (**Exhibit 14.1** at 2).

67. Despite his concerns, in light of Mood Media's assertion that Stingray did not have access to Dr. Hernandez's technology, he had no choice but to assume Mood Media was acting in good faith and honor the term sheet agreement that was signed or risk being liable for a $16M transaction between Stingray and Mood Media.

68. On April 15, 2014, as memorialized in his email (copied below) to individuals at Mood Media, Dr. Hernandez's remote access via Dr. Hernandez's pre-established IP Tunnels, was severed by Stingray or Mood Media, and, on information and belief, all of his servers at all cable operators were unlawfully stolen by Stingray.

Re: EGLA + MOOD

Emails

Edwin Hernandez, PhD <edwinhm@eglacorp.com> Tuesday, April 15, 2014 at 10:11 AM

To: Jim McFelea; Melanie McCool; Dodd Haynes; **Cc:** alcidesh@eglacorp.com; Cory Meltzer; Robert Strandberg

Re: Seguimiento al c...
182.2 KB

Download All Preview All

Hi Jim,

Access to TIA/ENCOMPASS has been terminated by STINGRAY or someone in Argentina, we received an email from Alejandro Cacciola copying some of the cable operators (see attached) that EGLA/Edwin Hernandez had nothing to do with the migration, it was sent out early at 10am yesterday. We don't have clarity about the use and access to the platform, this is very dangerous.

We cannot connect via the main and backup access ports to the system in TIA/ENCOMPASS.

Alejandro Cacciola wrote in an email to the cable operators that:
"Ya ni EGLA, ni Edwin Hernandez están mas involucrados en la operativa tecnica de esta migración. "

Translation,
"Neither EGLA, nor Edwin Hernandez are involved in the technical operations of this migration"

We have no control from that service any more at TIA/ENCOMPASS. All other services are operational, at the moment.

We need STINGRAY to give us access immediately if they need our help.

If you have any proposal for us, please send it in writing, although it's been great talking to you but we would like to see those via email.

Best Regards,

--
Edwin A. Hernandez, PhD

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69. Throughout the development of Dr. Hernandez's Trade Secrets and proprietary technology and at all times afterward, Dr. Hernandez and his company EGLA CORP made every effort and followed procedures to ensure that all of the trade secrets of his system remained secret. For example, Dr. Hernandez followed all best practices to secure configuration files, manuals, and all source code behind firewalls and IP secured Tunnels. Additionally, physical access was strictly controlled at the EQUINIX data center in Boca Raton, FL as well as iWeb.com. All employees to EGLA, associates and partners were required to sign NDAs in order to preserve the secrecy of all of Dr. Hernandez's Trade Secrets and innovations.

70. It is evident now that Mood Media and Stingray worked together to gain access to Dr. Hernandez's Trade Secrets, including his source code. As explained below, it wasn't until around mid-April 2021 that Dr. Hernandez realized that the term sheet agreement signed with

Mood Media was breached and Plaintiffs were defrauded by Mood Media's $16,000,000 transaction with Stingray wherein Mood Media provided Stingray with unauthorized access to Dr. Hernandez's Trade Secrets and server technology.

71. The term sheet agreement between Plaintiffs and Mood Media prohibited the transfer and use of Dr. Hernandez's technology by any party other than Mood Media/DMX. Accordingly, Plaintiffs are informed and believe that Mood Media had no intention to honor the agreement and instead intended to provide Stingray access to Dr. Hernandez's Trade Secrets and intellectual property upon completion of Stingray's acquisition of Mood Media/DMX.

72. Once Mood Media completed its transaction with Stingray, and provided Stingray access to Dr. Hernandez's technology, it terminated the agreement with Plaintiff in or around April 24, 2014.

73. Mood Media later asked Plaintiffs to sign a "settlement" agreement under the false and fraudulent premise that Dr. Hernandez's intellectual property had not been tampered with, stolen, or provided to Stingray.

74. Therefore, Mood Media and Stingray were enriched from their unlawful actions and put at risk Dr. Hernandez's Trade Secrets and intellectual property assets.

D. <u>Dr. Hernandez Discovers Theft of his Intellectual Property in April 2021</u>

75. On information and belief, Stingray uses a server device called UBIQUICAST. However, no documentation on how this device operates and works is publicly available.

76. Despite Stingray's secrecy provisions and the lack of public disclosure regarding the operation of Stingray's streaming services, in and around April 11, 2021, Dr. Hernandez discovered a website called **trello.com** and learned from it that the technologies used by Stingray incorporated his trade secrets and infringed on his patents (**Exhibits 15-16**).

77. As a result, Dr. Hernandez then realized that Stingray had gained unauthorized access to Dr. Hernandez's source code in or around April of 2014 by physically having control of his servers that contained his source code and other of his trade secrets. As noted above, on information and belief, at that time Stingray also terminated access to Dr. Hernandez's servers.

78. Until recently, Stingray has concealed how its UBIQUICAST software works. During the period corresponding to 2017 to 2020, Dr. Hernandez carefully examined several heavily redacted documents from the patent infringement litigation pending in the Eastern District of Texas between Music Choice and Stingray, Case No. 2:16-CV-0586-JRG-RSP (**Exhibit 18**), and tried to extract as much information as possible.

79. In this patent litigation between Stingray and Music Choice, and its associated breach of contract case, the closest disclosure was found in Judge Payne's order disclosing that Stingray had two versions of their technology (**Exhibit 18** at 344):

- OSE1 pre-Fall 2014 – not accused of infringement and trade secret misappropriation by Plaintiffs
- OSE2 after-Fall 2014 - accused of infringement and trade secret misappropriation by Plaintiffs

80. On information and belief, Ubiquicast OSE2 server was created by Stingray no later than March 2015 (".. prior to March 2015, Stingray did not offer or provide any music video TV channels to MVPDs…") as indicated by Stingray attorneys in the following partially redacted filing on June 4, 2019 (**Exhibit 18** at 9).

REDACTED

HIGHLY CONFIDENTIAL-ATTORNEY'S EYES ONLY

(STINGRAY118548 (Ex. 9)). Although Stingray provides at [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).

81. Additionally, in the complaint and amended complaints filed by Music Choice, Music Choice attorneys stated that Stingray had two versions of the UbiquiCAST platform. In particular, Music Choice alleged that "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… 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." (**Exhibit 18** at 717, ¶ 41)

82. Therefore, on information and belief, by Q4 of 2014, Stingray had a new version of the server, called Ubiquicast OSE2 server, that incorporated Dr. Hernandez's Trade Secrets, which Stingray obtained unlawfully by its unauthorized access to Dr. Hernandez's servers and source code.

83. Through subsequent investigation, Dr. Hernandez learned that Stingray continued to develop new products into which Stingray has incorporated Dr. Hernandez's Trade Secrets thus misappropriating Dr. Hernandez's and other EGLA CORP's proprietary information and know-how for its own benefit at Plaintiffs' expense. For example, Stingray has gained customers such

as AT&T U-verse®, Millicom's TIGO®, Blue Stream, and over 700+ cable operators resulting in 400 million subscribers in 156 countries (*See* **Exhibit 4**, listing some of the cable operators).

E. <u>Dr. Hernandez's Offer to License his Patented Technology to Stingray</u>

84. On information and belief, Stingray gained access to employees, documents, servers, and source code that was compromised during the Mood Media/DMX acquisition in 2014. Stingray was able to see all components and Dr. Hernandez's technologies in operation at a cable operator and severed all access to Dr. Hernandez in and around April 15, 2014.

85. To this date, Stingray's UbiquiCAST servers' information are not publicly available and rather vaguely described by Stingray on their web page[5]:

> Ubiquicast servers are set-up and configured to each client's specific requirements before being shipped to head-ends. This process facilitates installation and expedites time to market for new services. Stingray's technical team is available 24/7 for help and support, ensuring reliable and uninterrupted service for your customers.

86. As a result, Dr. Hernandez was unaware of any misappropriations and, beginning in 2017, proceeded to offer his help and expertise to Stingray as part of the patent dispute with Music Choice. Around September 15, 2017, Dr. Hernandez's company, EGLA CORP, and Stingray signed an NDA in connection with business discussions (**Exhibit 19**). Dr. Hernandez informed Stingray about his patent applications and proposed that Stingray would use his patented technologies as an alternative non-infringing solution to Music Choice's dispute.

87. Around 2018, Dr. Hernandez approached Stingray, as his first patent issued on November 6, 2018, and offered to license his patent portfolio and include all source code. As noted above, Dr. Hernandez and EGLA CORP were unaware that Stingray had misappropriated Dr. Hernandez's Trade Secrets at that time.

[5] https://www.stingray.com/business-solutions/tv-providers Last Visited March 28th, 2024

88. Again, on July 12, 2019, once USPTO granted the '074 patent to Dr. Hernandez, he presented a similar offer as he made in 2017 to Stingray's Board of Directors (**Exhibit 20**).

89. After several attempts and discussions held from 2017 to 2019 with Stingray's technical staff and its Vice President of Legal, Lloyd Feldman, that included providing Stingray with a copy of Dr. Hernandez's U.S. Patent Nos. 10,123,074 and 10,524,002, documentation, and presentations (**Exhibits 21, 22, and 23**), none of these communications received any positive or negative feedback from Stingray's counsel. Stingray's management and executives ultimately showed no interest in obtaining any licensing or developing any collaboration with EGLA CORP. Therefore, Dr. Hernandez ceased all communications with Stingray.

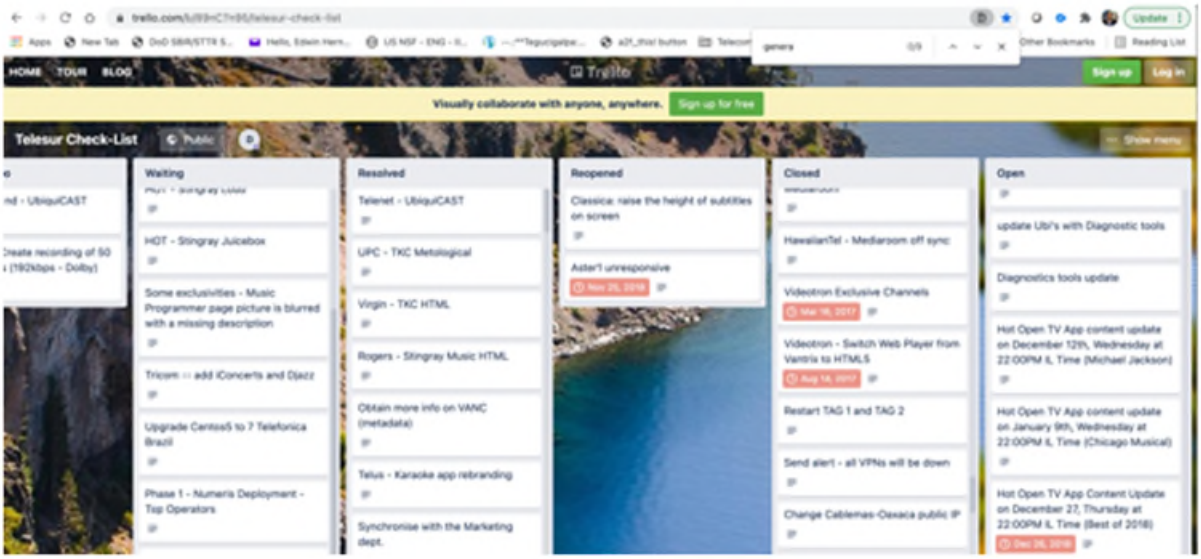
90. In hindsight, it is evident now that Stingray had no need to purchase or license Dr. Hernandez's technology as Stingray had illegally stolen Dr. Hernandez's Trade Secrets and was already using his technologies, including those that had been patented.

F. <u>Stingray Misappropriation of Dr. Hernandez's Trade Secrets</u>

91. As noted above, on or about April 7, 2021, Dr. Hernandez, as part of his diligence process and continuing its investigation into the possible unauthorized access to his proprietary technology by Stingray, discovered the trello.com website. From about April 7, 2021 to April 20, 2021, Dr. Hernandez reviewed all trouble tickets published on Trello and compiled them as shown in **Exhibits 15 and 16**.

92. The site's url, https://trello.com/b/89nC7n95/telesur-check-list, contained hundreds of trouble tickets generated by Stingray regarding its OSE2 Ubiquicast Server. The evidence also points to internal servers at stingray.com and stingraydigital.com, primarily JIRA instances "Jira Issue Link : https://jira-stage.corp.stingraydigital.com/browse/CUSTTS-1284," as

well as other Stingray internal sites such as "confluence."[6] A screen shot of the website is shown herein:



93. The trello.com website contains hundreds of entries from what appears to be all trouble tickets that Stingray handled with customers as early as March 2015 and as late as 2018. An example is shown in the following screenshot from **Exhibits 15 and 16**:

[6] https://www.atlassian.com/software/confluence/features. Confluence is an Atlassian tool. (Last accessed on April 16, 2021).

94. Dr. Hernandez proceeded to download relevant content and evaluate this evidence, none of which was disclosed in Stingray's patent litigation with Music Choice. Dr. Hernandez concluded that the content of the tickets was genuine and that there was sufficient evidence in these files to demonstrate that Stingray misappropriated Dr. Hernandez's Trade Secrets and, when it was later patented, infringes his patents.

95. For example, several of Dr. Hernandez's servers were installed at the same cable operators found at, for example, AXTEL TV, CABLE VISION and ENCOMPASS. The trello.com evidence demonstrates that Stingray had access to the servers that Dr. Hernandez installed and remotely managed. As shown in the following trouble tickets citing to AXTEL TV around April 13, 2015 (**Exhibit 15**, EGLA-TRELLO-000532), and many others.

Axtel -- Streaming engine restarted itself
in list Closed

ACTIONS
Share

Description

The audioengine, on primary server, stopped itself at 9:45 EDT and came back ~12 minutes after.

The following errors prior to stopping were displayed:

2015-04-13 09:44:39: [ERROR] Dynamic exception type: std::out_of_range
std::exception::what: vector::_M_range_check
2015-04-13 09:44:39: [ERROR] stack trace:
2015-04-13 09:44:39: [ERROR] /usr/lib64/libGalaxieFramework.so :
ExceptionHandler::SingletonHandler::Handler()+0x60
2015-04-13 09:44:39: [ERROR] /usr/lib64/libstdc++.so.6 [0x3f4f8bce46]
2015-04-13 09:44:39: [ERROR] /usr/lib64/libstdc++.so.6 [0x3f4f8bce73]
2015-04-13 09:44:39: [ERROR] /usr/lib64/libstdc++.so.6 [0x3f4f8bce86]
2015-04-13 09:44:39: [ERROR] /usr/lib64/libstdc++.so.6 :
__cxa_call_unexpected()+0x43
2015-04-13 09:44:39: [ERROR] bin/GalaxieAudioEngine :
VideotronTables::UpdateTableContent(std::vector<GalaxieTables::TableInfo,
std::allocator<GalaxieTables::TableInfo> > const&)+0xa36
2015-04-13 09:44:39: [ERROR] bin/GalaxieAudioEngine :
Multiplexer::OnChange(boost::shared_ptr<LineInfo>,
std::deque<boost::shared_ptr<LineInfo>,
std::allocator<boost::shared_ptr<LineInfo> > > const&)+0xa2f
2015-04-13 09:44:39: [ERROR] bin/GalaxieAudioEngine :
AudioSystem::RunListenerUpdater(boost::shared_ptr<LineChangeListener>,
boost::shared_ptr<LineInfo>, std::deque<boost::shared_ptr<LineInfo>,
std::allocator<boost::shared_ptr<LineInfo> > > const&)+0x2d8
2015-04-13 09:44:39: [ERROR] bin/GalaxieAudioEngine :
boost::detail::thread_data<boost::_bi::bind_t<void, boost::_mfi::mf3<void,
AudioSystem, boost::shared_ptr<LineChangeListener>,
boost::shared_ptr<LineInfo>, std::deque<boost::shared_ptr<LineInfo>,
std::allocator<boost::shared_ptr<LineInfo> > > const&>.

Cablevision -- Stream IP change request
in list Closed

ACTIONS
Share

Description

Customer would like to change the multicast address:port of the current config:

Current: 224.200.0.1:50000
New: 239.8.5.1:8501

#

Jira Issue Link : https://jira-stage.corp.stingraydigital.com/browse/CUSTTS-438

Activity

D deployment57 added this card to Closed
Jan 15, 2019 at 11:27 AM

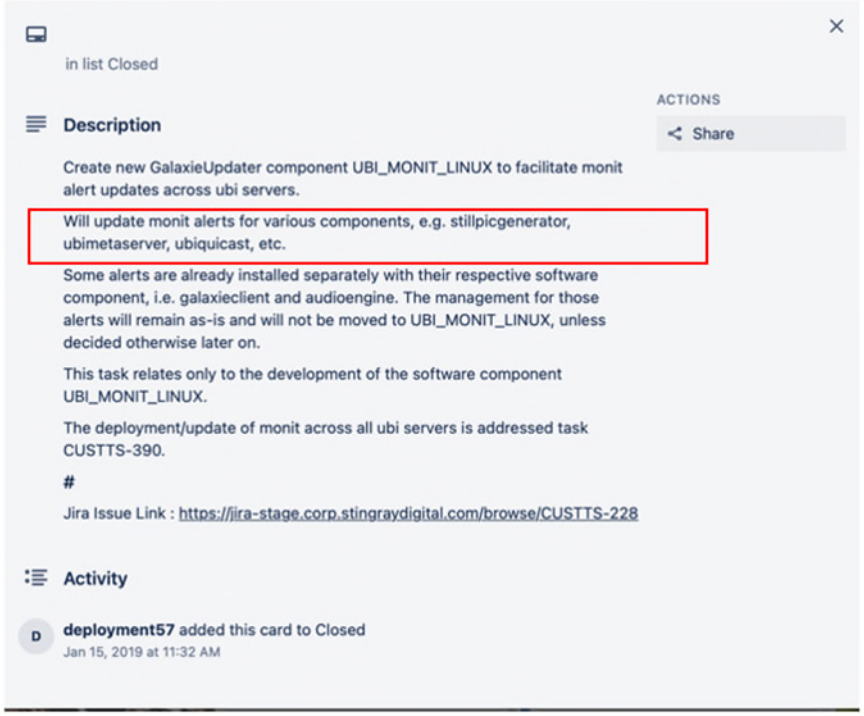
96. By examining trello.com evidence, Dr. Hernandez concluded that those skilled in the art would be able to demonstrate that Stingray's references at trello.com are representative of the software used in its UbiquiCAST servers and that those servers performed the same functions that are patented in Dr. Hernandez's Asserted Patents.

97. For instance, the Texas litigation at the "Daubert order" describes vaguely an artifact called "StillPict Generator" (**Exhibit 18** at MC-EGLA-000336):

> 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.

98. The same component "StilPic Generator," cited by the court order, is referenced in trello.com. As shown in trouble ticket below (**Exhibit 15**, at EGLA-TRELLO-000530), the text

"monit alerts for various components " that includes: "stillpicgenerator, ubimetaserver and ubiquicast."


in list Closed

ACTIONS

Share

Description

Create new GalaxieUpdater component UBI_MONIT_LINUX to facilitate monit alert updates across ubi servers.

Will update monit alerts for various components, e.g. stillpicgenerator, ubimetaserver, ubiquicast, etc.

Some alerts are already installed separately with their respective software component, i.e. galaxieclient and audioengine. The management for those alerts will remain as-is and will not be moved to UBI_MONIT_LINUX, unless decided otherwise later on.

This task relates only to the development of the software component UBI_MONIT_LINUX.

The deployment/update of monit across all ubi servers is addressed task CUSTTS-390.

#

Jira Issue Link : https://jira-stage.corp.stingraydigital.com/browse/CUSTTS-228

Activity

D **deployment57** added this card to Closed
Jan 15, 2019 at 11:32 AM

99. Dr. Hernandez reviewed over 654 references from trello.com to derive all claim charts (**Exhibits 24-26**) and conclude Stingray misappropriated his trade secrets and infringed his patents.

100. Dr. Hernandez's and EGLA CORP's stolen servers included confidential, proprietary, and trade secret software, designs, configuration contained in its servers that Gustavo Tonelli and Alejandro Cacciolla and other ex-DMX employees were aware of when employed by Mood Media and later when they became Stingray employees.

101. These servers contained source code in python, C/C++ encoders, a Linux-based software, PNG backgrounds, FFMPEG, MONIT, video generators, URL-based resources, and web asset processing, Audio in AC-3, Video in H.264 codecs etc. Dr. Hernandez's Trade Secrets included all architecture methods and systems with encodings scripts, source code to generate

screens, use of multicast IP Addresses, GOP sizes, audio encoders levels, and other configurations that the evidence shows were misappropriated by Stingray employees or contractors under Stingray's direction and control.

102. While Stingray's UbiquiCAST OSE2 servers appear from the trello evidence to be based on CentOS, a Linux-based system, and Dr. Hernandez used Ubuntu's platform, both systems use FFMPEG (**Exhibit 15 and 16** at EGLA-TRELLO-00063), Video Generators (*Id.* at EGLA-TRELLO-000565), URL and web asset processing (*Id.* at EGLA-TRELLO-0000565), MONIT (*Id.* at EGLA-TRELLO-000528), GOP Sizes (*Id.* at EGLA-TRELLO-000568), Multicast IP Address (*Id.* at EGLA-TRELLO-000639), EGLA-TRELLO-000604, Audio in AC-3 (*Id.* at EGLA-TRELLO-000450), Video in H.264 (*Id.* at EGLA-TRELLO-000654), for example.

103. Additionally, UbiquitCAST OSE2 servers use PNG backgrounds, which is not disclosed in Dr. Hernandez's U.S. Patent specifications, but is in the source code that was stored in the file. Indeed, the trouble tickets (**Exhibit 15** at EGLA-TRELLO-000496) and the directory "/data/stillpic/background," apparently are only supported by UbiquiCAST OSE2 servers. As shown herein:

Create new CentOS 7 Ubi Image

in list Closed

Actions

Share

Description

2)set the password - passwd (Stingray123!)
3) Install new Ubi version with libraries

7)Raise the limit of open files
process found here:
https://confluence.corp.stingraydigital.com/display/DV/Deployment+Useful+Shell+commands#DeploymentUsefulShellcommands-Raisethelimitofopenfiles
8)shutdown -rf now (if shutdown fails, and you have to connect to DRAC, delete last line in vim /etc/fstab, then reboot)

11)yum -y install dos2unix
12)service firewalld stop

15)in mysql galaxie, after GalaxieClient is done, set global max_connections = 500; (*may need to stop galaxieclient to get this to work)

17) yum install -y libstdc++ and, yum install -y libstdc++.i686 --skip-broken
18) Update Monit

20)create location /data/stillpic/background add background pngs (for ose2 only)
Message Input

#

Jira Issue Link : https://jira-stage.corp.stingraydigital.com/browse/CUSTTS-2135

104. Similarly, UbiquiCAST OSE2 is connected to the cloud, to Amazon's web services in the same manner that Dr. Hernandez's system operated with DMX2GO and iWeb platforms (**Exhibit 16** at 5, 10, 50, 54, and others).

105. Stingray's OSE2 software contain additional of Dr. Hernandez's Trade Secrets relating to the fact that, for example, like Dr. Hernandez's servers, they both can broadcast in different formats, including:

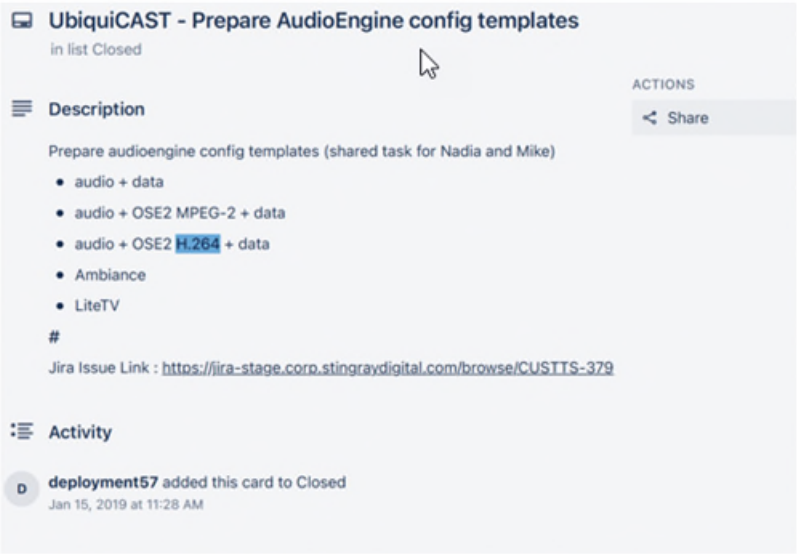
A. Broadcast audio with MPEG Data

B. Broadcast Audio with MPEG2Video and MPEG Data

C. Broadcast Audio with H.264 Video and MPEG Data

D. Where MPEG Data is optional.

The printout from trello.com reveals this fact (**Exhibit 15** at EGLA-TRELLO-000654).



106. Dr. Hernandez's Trade Secrets included, among other things, all the source code implementation on how "still images" were generated by the caching unit and broadcasted using an MPEG Transport Stream, which are fundamental parts of UbiquiCAST 0SE2 (**Exhibits 15 and 16**).

107. Therefore, Dr. Hernandez was able to demonstrate multiple instances where his trade secrets appeared in UbiquiCAST OSE2 servers before the June 2016 date when certain of the trade secrets were published as part of Dr. Hernandez's patent applications.

G. <u>Dr. Hernandez's Asserted Patents</u>

108. In December of 2014, Dr. Hernandez filed for patent protection for his technological innovations and has received approval of 94 claims spread across three (soon to be four) U.S. Patents and 8 claims in an European Patent covering 17 jurisdictions, patents infringed by Defendants.

109. On November 8, 2018, the United States Patent and Trademark Office (the "PTO") duly and lawfully issued United States Patent No. 10,123,074 ("'074 Patent"), entitled "Method, system, and apparatus for multimedia content delivery to cable TV and satellite operators." A true

and correct copy of the ’074 Patent is attached as **Exhibit 1** . Dr. Hernandez is the sole owner of the ’074 Patent.

110. On December 31st, 2019, the United States Patent and Trademark Office (the “PTO”) duly and lawfully issued United States Patent No. 10,524,002 (“’002 Patent”), entitled “Method, system, and apparatus for multimedia content delivery to cable TV and satellite operators.” A true and correct copy of the ’002 Patent is attached as **Exhibit 2**. Dr. Hernandez is the sole owner of the ’002 Patent.

111. On October 5, 2021, the United States Patent and Trademark Office (the “PTO”) duly and lawfully issued United States Patent No. 11,140,441(“’441 Patent”), entitled “Method, system, and apparatus for multimedia content delivery to cable TV and satellite operators.” A true and correct copy of the ’441 Patent is attached as **Exhibit 3**. Dr. Hernandez is the sole owner of the ’441 Patent.

112. On March 18, 2024, the United States Patent and Trademark Office (the “PTO”) issued a Notice of Allowance for US Patent Application. US17/493490 (“the ‘490 patent application”) entitled “Method, system, and apparatus for multimedia content delivery to cable TV and satellite operators.” A true and correct copy of the ’490 Patent claims is attached as Exhibit 27. Dr. Hernandez is the sole owner of the ’490 Patent Application.[7]

H. <u>Defendants Stingray, AT&T and Millicom’s Use of the Patented Technology</u>

113. Stingray and its customers have been and are directly infringing and indirectly infringing the Asserted Patents.

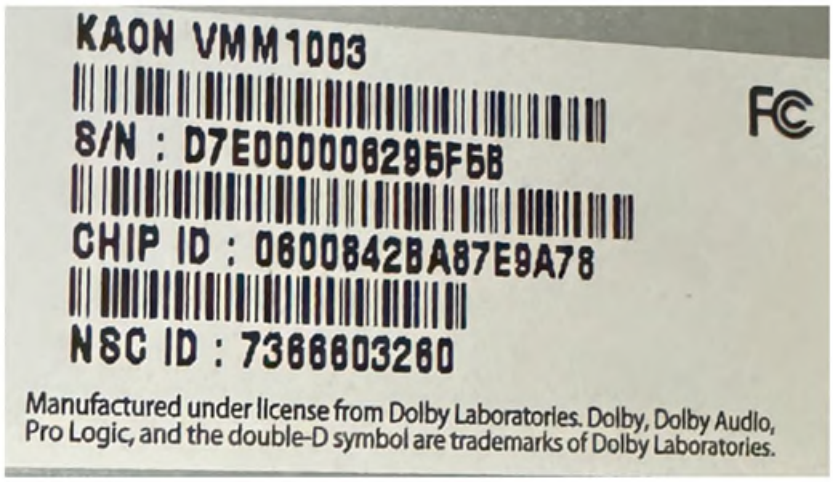
[7] The issuance of Dr. Hernandez’s fourth patent is expected within the next four to six weeks. At that time, Plaintiffs intend to add this additional patent to this lawsuit.

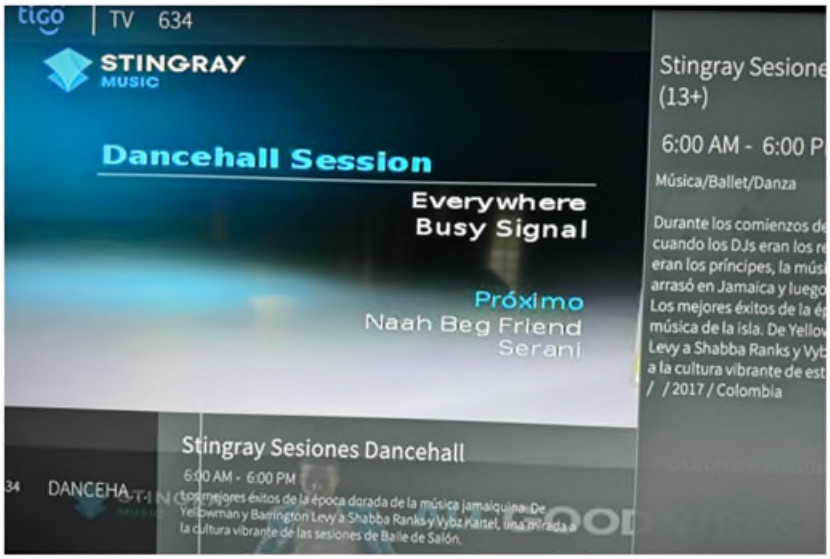
114. On information and believe, Stingray is a worldwide distributor of on-demand and liner content via the Internet, Cable Operators, IPTV Systems, and other devices, including cars.

115. Stingray makes, uses, sells, and offers for sale in the United States products and services that infringe the Asserted Patents, and continues to do so. These infringing products and services include online streaming services operated by Stingray through its Application, Site, Ubiquicast and other cloud-based Server(s) using at least UbiquiCAST OSE2 (collectively, "the Accused Streaming Services").

116. AT&T offers its product "AT&T U-verse®" and has assigned channels 5100 to 5174 that, from 2014 to 2024, have been serviced using UbiquiCAST OSE2 (**Exhibit 28**) (copied below).

117. Millicom operates under the corporate trade name "TIGO." TIGO offers mobile and TV streaming Products that in countries like Honduras, Paraguay, El Salvador, Bolivia, Guatemala, Nicaragua, and Colombia. The exhibit shows the mobile application and by using UbiquiCAST OSE2 (**Exhibit 15** at 82 and **Exhibit 16** at 94) with the signal received by a Set Top Box, KAON VMM 1003 Set Top Box.





I. Stingray Made Over $2B in Revenues From 2014 – 2023 and Derived From Dr. Hernandez's Trade Secrets and Patented Technology

118. In the case between Music Choice and Stingray, under oath, Music Choice's attorney argued that OSE1 was an inferior product: *"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."* (**Exhibit 18** at MC-EGLA-000348).

119. During the timeframe corresponding to 2014 to 2024 and after the DMX acquisition and the trade secret theft, Stingray completed an IPO raising C$140M (over US$112 M)[8], and raised its annual revenues from around C$80.6M in 2013 to C$323M in 2023.[9]

120. In the litigation between Stingray and Music Choice, Music Choice's damages expert opined that Stingray gained US$14.6M in revenues from AT&T and $0.83M from Liberty (**Exhibit 18** at MC-EGLA-000346).

121. In sum, the release of Ubiquicast OSE2 coincides with Stringray's IPO and Stingray's increased revenues and subscriber base. Dr. Hernandez' technologies were fundamental to "upgrade" OSE1 to OSE2 and hence catapult Stingray revenues, make acquisitions, and gain a leadership position in the industry.

122. Therefore, Stingray illegally enriched itself by hundreds of millions of dollars creating OSE2, a superior product to OSE1, using Dr. Hernandez's Trade Secrets and patented technology.

FIRST CAUSE OF ACTION
Violation of Defend Trade Secrets Act 18 U.S.C. § 1836 et seq.
(Against Stingray and Mood Media)

123. Plaintiffs incorporate paragraphs 1-122 as though fully set forth herein.

124. The Dr. Hernandez's Trade Secrets, including but not limited to, source code, HTML and XML code, functional requirement specifications, operating procedures, automation validation test scripts, equipment listings, configuration specifications, all architecture methods and systems with encodings scripts, source code to generate screens, source code implementation on how "still images" were generated by the caching unit and broadcasted using an MPEG Transport Stream, use of multicast IP Addresses, GOP sizes, audio encoders levels, and

[8] https://finance.yahoo.com/news/stingray-ipo-values-music-provider-113-million-204755524--finance.html
[9] https://corporate.stingray.com/financial-results/

information in the Asserted Patents before their public disclosure on June 30, 2016 (*see e.g.*, **Exhibits 24-26**) that Stingray and Mood Media had access to via Mood Media's agreement with Plaintiffs, are trade secrets which Plaintiffs have taken reasonable measures to keep secret and from which Plaintiffs derive independent value from not being generally known to, and not being readily ascertainable through proper means by, other persons who can obtain economic value from the disclosure or use of the information.

125. As detailed above, Dr. Hernandez's Trade Secrets are used to deliver audio and video content using cloud-based platforms and mobile applications using secure remote servers which are then distributed in the United States and abroad, and as a result, are related to a product or service used in, or intended for use in, interstate and foreign commerce.

126. Stingray and Mood Media have misappropriated Dr. Hernandez's Trade Secrets in one or more of the following ways:

a) By acquiring Dr. Hernandez's Trade Secrets through improper means (e.g., misrepresentations, breach or inducement of a breach of a duty to maintain secrecy);

b) By disclosing and/or using Dr. Hernandez's Trade Secrets without Plaintiffs' consent;

c) By disclosing and/or using Dr. Hernandez's Trade Secrets without Plaintiffs' consent for their own commercial benefit while knowing, or having reason to know, at the time of the disclosure and/or use, that Dr. Hernandez's Trade Secrets were acquired through improper means;

d) By disclosing and/or using Dr. Hernandez's Trade Secrets without Plaintiffs' consent for their own commercial benefit while knowing, or having reason to know, at the time of the disclosure and/or use, that Dr. Hernandez's Trade Secrets were acquired under

circumstances giving rise to a duty to maintain the secrecy and limit the use of those trade secrets; and

e) By disclosing and/or using Dr. Hernandez's Trade Secrets without Plaintiffs' consent for their own commercial benefit while knowing, or having reason to know, at the time of the disclosure and/or use, that Dr. Hernandez's Trade Secrets were derived from or through a person who owed a duty to Plaintiffs to maintain the secrecy and limit the use of those Trade Secrets.

127. Stingray and Mood Media took such actions willfully, maliciously, and/or in reckless disregard for Plaintiffs' rights, in that Stingray and Mood Media knew, or had reason to know, pursuant to the terms of agreement with Plaintiffs, that Stingray and Mood Media were not authorized to use Dr. Hernandez's Trade Secrets in competition with Plaintiffs or for Stingray's and Mood Media's own commercial benefit.

128. As a result of Stingray's and Mood Media's misappropriation of Dr. Hernandez's Trade Secrets, Plaintiffs has suffered and will continue to suffer actual damages, and/or Stingray and Mood Media have been unjustly enriched, in an amount to be determined at trial.

129. As a result of Stingray's and Mood Media's misappropriation of Dr. Hernandez's Trade Secrets, Plaintiffs have suffered and will continue to suffer irreparable harm if Stingray's and Mood Media's misconduct is not enjoined.

130. Pursuant to 18 U.S.C. § 1836(b)(3)(C), Plaintiffs are entitled to exemplary damages for Stingray's and Mood Media's willful and malicious misappropriation of Dr. Hernandez's Trade Secrets.

131. Pursuant to 18 U.S.C. § 1836(b)(3)(D), Plaintiffs are entitled to recovery of their attorneys' fees because of Stingray's and Mood Media's willful and malicious misappropriation of Dr. Hernandez's Trade Secrets.

SECOND CAUSE OF ACTION
Violation of Florida Uniform Trade Secret Act, Fla. Stat. § 688 *et seq*.
(Against Stingray and Mood Media)

132. Plaintiffs incorporate paragraphs 1-122 as though fully set forth herein.

133. This is a cause of action for misappropriation of trade secrets under the Florida Uniform Trade Secrets Act, Fla. Stat. § 688.001, *et seq*., based on the wrongful misappropriation, use, and/or disclosure of Dr. Hernandez's Trade Secrets, including but not limited to, source code, HTML and XML code, functional requirement specifications, operating procedures, automation validation test scripts, equipment listings, configuration specifications, all architecture methods and systems with encodings scripts, source code to generate screens, source code implementation on how "still images" were generated by the caching unit and broadcasted using an MPEG Transport Stream, use of multicast IP Addresses, GOP sizes, audio encoders levels, and information in the Asserted Patents before their public disclosure on June 30, 2016 (*see e.g*., **Exhibits 24-26**), and other highly confidential information that Stingray and Mood Media had access to via Mood Media's agreement with Plaintiffs.

134. Dr. Hernandez's Trade Secrets are trade secrets because they derive independent economic value from not being generally known to the public or to others who can obtain economic value from their disclosure or use, and they are the subject of efforts that are reasonable under the circumstances to maintain their secrecy.

135. Stingray and Mood Media gained access to Dr. Hernandez's Trade Secrets in the course of Mood Media's agreement with Plaintiffs, and Mood Media was under a contractual and

fiduciary obligation to maintain the secrecy of Dr. Hernandez's Trade Secrets during the term of Mood Media's agreement with Plaintiffs and thereafter.

136. Plaintiffs took reasonable precautions to protect Dr. Hernandez's Trade Secrets, and Mood Media was subject to obligations to maintain their secrecy.

137. In violation of their obligations to maintain the secrecy of Dr. Hernandez's Trade Secrets, on information and belief, Stingray and Mood Media improperly acquired and/or disclosed Dr. Hernandez's Trade Secrets.

138. On information and belief, Stingray and Mood Media have used and/or disclosed and continue to use and disclose Dr. Hernandez's Trade Secrets, without Plaintiffs' consent or permission, in an attempt to benefit themselves.

139. On information and belief, Stingray and Mood Media have used and/or disclosed Dr. Hernandez's Trade Secrets, maliciously and in willful and conscious disregard of the rights of Plaintiffs.

140. As a direct and proximate result of Stingray's and Mood Media's willful, improper, and unlawful use and/or disclosure of Dr. Hernandez's Trade Secrets, Plaintiffs have suffered and continue to be damaged. Plaintiffs will continue to be irreparably damaged unless Stingray and Mood Media are enjoined from further use and disclosure of Dr. Hernandez's Trade Secrets, as provided by Fla. Stat. § 688.003.

141. The aforementioned acts of Stingray and Mood Media wrongfully misappropriating the Dr. Hernandez's Trade Secrets were and continue to be willful and malicious, warranting an award of exemplary damages, as provided by Fla. Stat. § 688.004, and an award of attorneys' fees, as provided by Fla. Stat. § 688.005.

THIRD CAUSE OF ACTION
Infringement of Patent No. 10,123,074 (Against all Defendants, except Stingray Music and Mood Media)

142. Plaintiffs incorporate paragraphs 1-122 as though fully set forth herein.

143. The ’074 patent is attached to this Complaint as **Exhibit 1**.

144. Dr. Hernandez is the owner of all rights, title and interests to the ‘074 Patent, including the right to bring this suit for injunctive relief and damages.

145. The ‘074 patent is valid and enforceable.

146. On information and belief, Defendants make, use, offer for sale, sell, or import certain services and products, including but not limited to the use of UbiquiCAST OSE2 (“Accused Streaming Platforms”), to provide streaming music to Cable TV Operators, IPTV systems, and OTT Service Providers in the United States and in this District that directly infringe one or more claims of the ‘074 Patent, literally or under the doctrine of equivalents, including at least claims 1 to 19 of the ‘074 Patent as set forth in the preliminary infringement claim chart attached as **Exhibit 24**.

147. On information and belief, Defendants manufacture, or contract with vendors and others to manufacture, use and distribute the Accused Streaming Platforms. Within this jurisdiction and elsewhere, Defendants and their employees, agents and affiliates use the Accused Streaming Platforms in connection with their design, development, testing and maintenance of the Accused Streaming Platforms as well as in connection the use of the Accused Streaming Platforms by their employees, agents, affiliates, and customers.

148. On information and belief, Defendants further provide and distribute, or contract with others to provide and distribute, the Accused Streaming Platforms. Customers and/or end users use Accused Streaming Platforms in accordance with Defendants’ provided instructions, terms, and conditions.

149. To the extent that some elements or steps of a claim in the '074 patent are performed or provided by a different party than Defendants, those elements or steps are attributable to the Defendants because Defendants participate in the infringement (as described above and herein) and such parties receive a benefit upon use and performance of the claimed systems and methods of the '074 patent. In particular, Defendants establish the manner and/or timing of the performance of the use of Defendants Accused Streaming Platforms and thus direct and control the actions that a user may request or the results from a user's actions. Defendants' customers and users receive a benefit in that they are able stream audio content (e.g., music). Defendants' contracts with users also create an agency relationship or govern infringing activity for purposes of joint infringement.

150. On information and belief, in accordance with Defendants' instructions, Defendants' customers and other end users use the Accused Streaming Platforms in a way that practice the claimed methods of the '074 patent as set forth above. Through their software and hardware on Defendants' equipment, as well as their contractual relationships with users, Defendants thus direct and control users to perform acts of infringement alleged above.

151. On information and belief, Defendants enter into agreements with customers and/or end users and others and condition their use of Defendants' Accused Streaming Platforms and its functionality upon consent with Defendants' Terms and Conditions and Privacy Policies, within this jurisdiction and elsewhere.

152. On information and belief, at least since November 11, 2019, Defendants have knowingly and actively induced the infringement of one or more of the '074 patent claims by, inter alia, marketing, promoting, and offering for use the Accused Streaming Platforms, knowingly and intending that the use of such instrumentalities by Defendants' customers and by users infringes the '074 patent. For example, Defendants intend to induce such infringement by, among other

things, promoting users to use the Accused Streaming Platforms knowing that its use infringes one or more claims of the '074 patent.

153. On information and belief, at least since November 11, 2019, Defendants have contributed to the infringement of the '074 patent by, inter alia, marketing and promoting the Accused Streaming Platforms. Defendants have used and promoted within the United States the Accused Streaming Platforms. By virtue of incorporating the patented technology described above, the Accused Streaming Platforms are not staple articles or commodities of commerce suitable for substantial non-infringing use and are known by Defendants to be especially made or especially adapted to the infringe the '074 patent. As a result, Defendants' Accused Streaming Platforms have been used by their customers and by users to infringe the '074 patent. Defendants continue to engage in acts of contributory infringement of the '074 patent.

154. Plaintiffs, under 35 U.S.C. § 284, may recover damages adequate to compensate for Defendants' infringement, but in no event less than a reasonable royalty for the use made of the invention by the infringer, together with interest and costs as fixed by the Court.

155. Defendants infringe and continue to infringe after knowledge of the '074 Patent, such infringement is deliberate, knowing, and willful under 35 U.S.C § 284, entitling Plaintiffs to treble damages.

156. The Court should declare this an exceptional case under 35 U.S.C. § 285, entitling Plaintiffs to recover their attorneys' fees.

157. Defendants threaten to continue to engage in the acts complained of herein and, unless restrained and enjoined, will continue to do so, all to Plaintiffs' irreparable injury. It would be difficult to ascertain the amount of compensation that would afford Plaintiffs adequate relief

for such future and continuing acts, and a multiplicity of judicial proceedings would be required. Plaintiffs do not have an adequate remedy at law to compensate it for the injuries threatened.

FOURTH CAUSE OF ACTION
Infringement of Patent No. 10,524,002 (Against all defendants, except Stingray Music and Mood Media)

158. Plaintiffs incorporate paragraphs 1-122 as though fully set forth herein.

159. The ’002 Patent is attached to this Complaint as **Exhibit 2**.

160. Dr. Hernandez is the owner of all rights, title and interests to the ’002 Patent, including the right to bring this suit for injunctive relief and damages.

161. The ’002 patent is valid and enforceable.

162. On information and belief, Defendants make, use, offer for sale, sell, or import certain services and products, including but not limited to the use Accused Streaming Platforms to provide streaming music to Cable TV Operators, IPTV systems, and OTT Service Providers in the United States and in this District that directly infringe one or more claims of the ’002 Patent, literally or under the doctrine of equivalents, including at least claims 1-2 and 4-9 of the ’002 Patent as set forth in the preliminary infringement claim chart attached as **Exhibit 25**.

163. On information and belief, Defendants manufacture, or contract with vendors and others to manufacture, use and distribute the Accused Streaming Platforms. Within this jurisdiction and elsewhere, Defendants and their employees, agents and affiliates use the Accused Streaming Platforms in connection with their design, development, testing and maintenance of the Accused Streaming Platforms as well as in connection the use of the Accused Streaming Platforms by their employees, agents, affiliates, and customers.

164. On information and belief, Defendants further provide and distribute, or contract with others to provide and distribute, the Accused Streaming Platforms. Customers and/or end

users use Accused Streaming Platforms in accordance with Defendants' provided instructions, terms, and conditions.

165. To the extent that some elements or steps of a claim in the '002 Patent are performed or provided by a different party than Defendants, those elements or steps are attributable to the Defendants because Defendants participate in the infringement (as described above and herein) and such parties receive a benefit upon use and performance of the claimed systems and methods of the '002 Patent. In particular, Defendants establish the manner and/or timing of the performance of the use of Defendants Accused Streaming Platforms and thus direct and control the actions that a user may request or the results from a user's actions. Defendants' customers and users receive a benefit in that they are able stream audio content (e.g., music). Defendants' contracts with users also create an agency relationship or govern infringing activity for purposes of joint infringement.

166. On information and belief, in accordance with Defendants' instructions, Defendants' customers and other end users use the Accused Streaming Platforms in a way that practice the claimed methods of the '002 Patent as set forth above. Through their software and hardware on Defendants' equipment, as well as their contractual relationships with users, Defendants thus direct and control users to perform acts of infringement alleged above.

167. On information and belief, Defendants enter into agreements with customers and/or end users and others and condition their use of Defendants' Accused Streaming Platforms and its functionality upon consent with Defendants' Terms and Conditions and Privacy Policies, within this jurisdiction and elsewhere.

168. On information and belief, at least since January 1, 2020, Defendants have knowingly and actively induced the infringement of one or more of the '002 Patent claims by, inter alia, marketing, promoting, and offering for use the Accused Streaming Platforms, knowingly and

intending that the use of such instrumentalities by Defendants' customers and by users infringes the '002 Patent. For example, Defendants intend to induce such infringement by, among other things, promoting users to use the Accused Streaming Platforms knowing that its use infringes one or more claims of the '002 Patent.

169. On information and belief, at least since January 1, 2020, Defendants have contributed to the infringement of the '002 Patent by, inter alia, marketing and promoting the Accused Streaming Platforms. Defendants have used and promoted within the United States the Accused Streaming Platforms. By virtue of incorporating the patented technology described above, the Accused Streaming Platforms are not staple articles or commodities of commerce suitable for substantial non-infringing use and are known by Defendants to be especially made or especially adapted to the infringe the '002 Patent. As a result, Defendants' Accused Streaming Platforms have been used by their customers and by users to infringe the '002 Patent. Defendants continue to engage in acts of contributory infringement of the '002 Patent.

170. Plaintiffs, under 35 U.S.C. § 284, may recover damages adequate to compensate for Defendants' infringement, but in no event less than a reasonable royalty for the use made of the invention by the infringer, together with interest and costs as fixed by the Court.

171. Defendants infringe and continue to infringe after knowledge of the '002 Patent, such infringement is deliberate, knowing, and willful under 35 U.S.C § 284, entitling Plaintiffs to treble damages.

172. The Court should declare this an exceptional case under 35 U.S.C. § 285, entitling Plaintiffs to recover their attorneys' fees.

173. Defendants threaten to continue to engage in the acts complained of herein and, unless restrained and enjoined, will continue to do so, all to Plaintiffs' irreparable injury. It would

be difficult to ascertain the amount of compensation that would afford Plaintiffs adequate relief for such future and continuing acts, and a multiplicity of judicial proceedings would be required. Plaintiffs do not have an adequate remedy at law to compensate it for the injuries threatened.

FIFTH CAUSE OF ACTION
Infringement of Patent No. 11,140,441 (Against all Defendants, except Stingray Music and Mood Media)

174. Plaintiffs incorporate paragraphs 1-122 as though fully set forth herein.

175. The ’441 Patent is attached to this Complaint as **Exhibit 3**.

176. Dr. Hernandez is the owner of all rights, title and interests to the ’441 Patent, including the right to bring this suit for injunctive relief and damages.

177. The ’441 Patent is valid and enforceable.

178. On information and belief, Defendants make, use, offer for sale, sell, or import certain services and products, including but not limited to the use of Accused Streaming Platforms to provide streaming music to Cable TV Operators, IPTV systems, and OTT Service Providers in the United States and in this District that directly infringe one or more claims of the ’441 Patent, literally or under the doctrine of equivalents, including at least claims 1-14 and 16-26 of the ’441 Patent as set forth in the preliminary infringement claim chart attached as **Exhibit 26**.

179. On information and belief, Defendants manufacture, or contract with vendors and others to manufacture, use and distribute the Accused Streaming Platforms. Within this jurisdiction and elsewhere, Defendants and their employees, agents and affiliates use the Accused Streaming Platforms in connection with their design, development, testing and maintenance of the Accused Streaming Platforms as well as in connection the use of the Accused Streaming Platforms by their employees, agents, affiliates, and customers.

180. On information and belief, Defendants further provide and distribute, or contract with others to provide and distribute, the Accused Streaming Platforms. Customers and/or end

users use Accused Streaming Platforms in accordance with Defendants' provided instructions, terms, and conditions.

181. To the extent that some elements or steps of a claim in the '441 Patent are performed or provided by a different party than Defendants, those elements or steps are attributable to the Defendants because Defendants participate in the infringement (as described above and herein) and such parties receive a benefit upon use and performance of the claimed systems and methods of the '441 Patent. In particular, Defendants establish the manner and/or timing of the performance of the use of Defendants Accused Streaming Platforms and thus direct and control the actions that a user may request or the results from a user's actions. Defendants' customers and users receive a benefit in that they are able stream audio content (e.g., music). Defendants' contracts with users also create an agency relationship or govern infringing activity for purposes of joint infringement.

182. On information and belief, in accordance with Defendants' instructions, Defendants' customers and other end users use the Accused Streaming Platforms in a way that practice the claimed methods of the '441 Patent as set forth above. Through their software and hardware on Defendants' equipment, as well as their contractual relationships with users, Defendants thus direct and control users to perform acts of infringement alleged above.

183. On information and belief, Defendants enter into agreements with customers and/or end users and others and condition their use of Defendants' Accused Streaming Platforms and its functionality upon consent with Defendants' Terms and Conditions and Privacy Policies, within this jurisdiction and elsewhere.

184. On information and belief, at least since the filing of the original complaint, Defendants have knowingly and actively induced the infringement of one or more of the '441 Patent claims by, inter alia, marketing, promoting, and offering for use the Accused Streaming

Platforms, knowingly and intending that the use of such instrumentalities by Defendants' customers and by users infringes the '441 Patent. For example, Defendants intend to induce such infringement by, among other things, promoting users to use the Accused Streaming Platforms knowing that its use infringes one or more claims of the '441 Patent.

185. On information and belief, at least since the filing of the original complaint, Defendants have contributed to the infringement of the '441 Patent by, inter alia, marketing and promoting the Accused Streaming Platforms. Defendants have used and promoted within the United States the Accused Streaming Platforms. By virtue of incorporating the patented technology described above, the Accused Streaming Platforms are not staple articles or commodities of commerce suitable for substantial non-infringing use and are known by Defendants to be especially made or especially adapted to the infringe the '441 Patent. As a result, Defendants' Accused Streaming Platforms have been used by their customers and by users to infringe the '441 Patent. Defendants continue to engage in acts of contributory infringement of the '441 Patent.

186. Plaintiffs, under 35 U.S.C. § 284, may recover damages adequate to compensate for Defendants' infringement, but in no event less than a reasonable royalty for the use made of the invention by the infringer, together with interest and costs as fixed by the Court.

187. Defendants infringe and continue to infringe after knowledge of the '441 Patent, such infringement is deliberate, knowing, and willful under 35 U.S.C § 284, entitling Plaintiffs to treble damages.

188. The Court should declare this an exceptional case under 35 U.S.C. § 285, entitling Plaintiffs to recover their attorneys' fees.

189. Defendants threaten to continue to engage in the acts complained of herein and, unless restrained and enjoined, will continue to do so, all to Plaintiffs' irreparable injury. It would be difficult to ascertain the amount of compensation that would afford Plaintiffs adequate relief for such future and continuing acts, and a multiplicity of judicial proceedings would be required. Plaintiffs do not have an adequate remedy at law to compensate it for the injuries threatened.

SIXTH CAUSE OF ACTION
Breach of Contract (Against Mood Media)

190. Plaintiffs incorporate paragraphs 1-122 as though fully set forth herein.

191. Plaintiffs and Mood Media (acting through its business DMX) entered into a Non-Disclosure Agreement (NDA), a term sheet, and a mutual release/settlement agreement.

192. The NDA, term sheet and mutual release/settlement agreement are valid and enforceable contracts between Plaintiffs and Mood Media.

193. Mood Media terminated the term sheet agreement with Plaintiffs without cause and in violation of the terms of this agreement.

194. The NDA and term sheet agreement prohibited the disclosure, transfer, and use of Dr. Hernandez's confidential information to any other party other than Mood Media/DMX, which are material terms of both agreements. Mood Media violated the NDA and term sheet by transferring Dr. Hernandez's confidential information to Stingray and/or allowing Stingray to use Dr. Hernandez's confidential information.

195. Plaintiffs and Mood Media entered into a settlement agreement whereby Mood Media agreed not to disclose any of Plaintiffs' confidential information, including its trade secrets, with Stingray. Mood Media breached this agreement by disclosing Plaintiffs' confidential information to Stingray.

196. Mood Media's breaches are without excuse under law or contract.

197. Plaintiffs have fully performed all of its obligations and satisfied all conditions for performance under the NDA, term sheet and settlement agreement.

198. Mood Media has willfully, and with conscious disregard for the contractual obligations owed to Plaintiffs, breached the NDA, term sheet and settlement agreement.

199. Unless restrained and enjoined by the Court, Mood Media will continue to breach the NDA, term sheet and settlement agreement.

200. As a foreseeable, direct and proximate result of Mood Media's breach of contract, and their breach was a substantial factor in causing Plaintiffs to suffer irreparable injury to its rights and pecuniary damages. Plaintiffs have been, and will continue to, suffer such injury, loss, and damage by the breaches described herein.

201. But for Mood Media's breach of contract, Plaintiffs would not have been injured by their disclosure of Plaintiffs' confidential information, including Dr. Hernandez's Trade Secrets.

202. Mood Media has derived and received and will continue to derive and receive from the aforementioned breach of contract, gains, profits, and advantages, many of which are not known to Plaintiffs.

203. Plaintiffs are entitled to injunctive relief as well as damages, the nature and extent of which will be proved at trial.

SEVENTH CAUSE OF ACTION
Unjust Enrichment (Against Stingray and Mood Media)

204. Plaintiffs incorporate paragraphs 1-122 as though fully set forth herein.

205. Defendants Stingray and Mood Media were unjustly enriched through their knowing use of Plaintiffs' confidential and proprietary information, including but not limited to,

the period from June 30, 2016 through November 6, 2018 when Plaintiffs' trade secrets were disclosed in Dr. Hernandez's patent applications until the time when the first patent issued.

206. Defendants Stingray and Mood Media voluntarily accepted and used Plaintiffs' confidential and proprietary information to generate revenues through their streaming services, allowing Stingray to generate over US $900 million dollars in revenues and Stingray to raise around US $300 million dollars in an initial public offering and Mood Media to raise over US $16 million dollars from its sale of its DMX division to Stingray.

207. The circumstances of Defendants Stingray's and Mood Media's use of Plaintiffs' confidential and proprietary information is such that it would be inequitable for them to retain these benefits without first paying the value thereof to Plaintiffs.

EIGHTH CAUSE OF ACTION
Common Law Fraud (Defendants Stingray and Mood Media)

208. Plaintiffs incorporate paragraphs 1-122 as though fully set forth herein.

209. Mood Media entered into an NDA and later a "Term sheet" with Plaintiffs that prohibited the disclosure, transfer, and use of Dr. Hernandez's confidential information to any other party other than Mood Media/DMX. Mood Media violated the NDA and term sheet by transferring Dr. Hernandez's confidential information to Stingray and/or allowing Stingray to use Dr. Hernandez's confidential information.

210. Mood Media was aware of the terms of the agreements but had no intention of honoring them. Mood Media's representations to Plaintiffs were false, despite their representations to Plaintiffs that it would not disclose, transfer, or use of Dr. Hernandez's confidential and proprietary information to any other party other than Mood Media/DMX.Mood Media knew its representations were false when made, or that they were made recklessly and without regard to their truth, because they intended to disclose Dr. Hernandez's confidential and

proprietary information to Stingray in connection with Stingray's acquisition of Mood Media's DMX business.

211. Mood Media knowingly made these false representations to induce Plaintiffs to provide confidential and proprietary information, Based on their reasonable reliance, Plaintiffs provided Mood Media with such confidential and proprietary information.

212. Mood Media's false representations to Plaintiffs were a substantial factor in causing harm to them. By providing confidential and proprietary information, Plaintiffs suffered damages in an amount to be proven with certainty at trial as an actual and proximate result of the intentional misrepresentation by Mood Media.

213. By performing the foregoing acts, Mood Media acted with the intent to injure Plaintiffs and acted with malice, oppression, and/or fraud. Alternatively, the acts of Mood Media were despicable and in conscious disregard of the probability of damage to Plaintiffs and, thus, the conduct alleged herein supports an award of punitive damages pursuant in an amount designed to punish Mood Media and to deter such conduct in the future. To the extent that such acts by Mood Media were conducted through their employees, those employees were either its officers, directors, managing agents or shareholders of Mood Media, or such officers, directors, managing agents or shareholders were aware in advance that such conduct would occur, exhibited conscious disregard for the rights of others in employing the employee, or directed or ratified such conduct by its employee(s).

NINTH CAUSE OF ACTION
Unfair Competition Under Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), § 501.201 *et seq*. (Against Stingray and Mood Media)

214. Plaintiffs incorporate paragraphs 1-122 as though fully set forth herein.

215. Defendants Stingray and Mood Media engaged in deceptive acts and unfair practices in the use of Dr. Hernandez's Trade Secrets in violation of the DTSA and FUTSA, the

use of his confidential and proprietary information that are not trade secrets, the breach of Mood Media's agreements with Plaintiffs, and related fraudulent acts.

216. Defendants Stingray and Mood Media's deceptive and unfair practices that caused harmed to Plaintiffs' business also harmed consumers of streaming music services to pay more for such services because of the lack of competition from others, such as Plaintiffs.

217. Plaintiffs have sustained damages in decreased sales, lost profits or opportunities, a loss of reputation and consumer goodwill attributed to Defendants Stingray and Mood Media's unfair acts. Such damages include, but are not limited to, expenses connected with Plaintiffs' attempts to undo the harm caused by Defendants Stingray and Mood Media, a loss of existing customers and contracts, a loss of Plaintiffs' ability to obtain competitive pricing for its services, and a diversion of potential sales to existing customers. Such damages seek to recover such benefits that, but for Stingray and Mood Media's wrongful acts, Plaintiffs would have expected to receive.

218. Defendants Stingray and Mood Media threaten to continue to engage in the acts complained of herein and, unless restrained and enjoined, will continue to do so, all to Plaintiffs' irreparable injury. It would be difficult to ascertain the amount of compensation that would afford Plaintiffs adequate relief for such future and continuing acts, and a multiplicity of judicial proceedings would be required. Plaintiffs do not have an adequate remedy at law to compensate it for the injuries threatened.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief:

A. Judgment in favor of Plaintiffs and against Defendants on all claims for relief alleged herein;

B. Preliminary and permanent injunctive relief that orders, enjoins, and restrains Defendants and all persons acting in concert or participation with Defendants, as follows:

a. prohibits the use, disclosure, transmission or continued possession for any purpose of Dr. Hernandez's Trade Secrets or confidential information, including but not limited to Defendants sales and importation of all streaming products that Stingray distributes in the United States;

b. compels the return to Plaintiffs of any and all records, information and/or documents in any form, hardware, firmware, software, including source code, received or removed from Plaintiffs by Defendants, including all copies, within five (5) days from the entry of this Court's Order. This requirement includes all records, information or documents, in any form, hardware, firmware, software, including source code, created by Defendants, or anyone acting in concert with Defendants, based on documents or information received or removed from Plaintiffs by Defendants;

c. prohibits any other unauthorized use or disclosure of the Dr. Hernandez's Trade Secrets or confidential information in connection with any goods or services provided by Defendants or any persons acting in concert or participation with Defendants;

d. prohibits the use of Dr. Hernandez's Trade Secrets or confidential information in any other manner to Defendants' benefit or to the detriment of Plaintiffs;

e. prohibits the direct or indirect disclosure to any person or entity of the Dr. Hernandez's Trade Secrets or confidential information; and

f. orders Defendants to turn over to the Court any proceeds that Defendants, or any persons acting in concert or participation with Defendants, have received from the misappropriation of the Dr. Hernandez's Trade Secrets or confidential information, and other unlawful conduct, such proceeds to be held in constructive trust until the conclusion of this litigation.

C. An order requiring Defendants to account for all gains, profits, increases in value, unjust enrichment, and other advantages derived from their misappropriation of Dr. Hernandez's Trade Secrets and confidential information.

D. For an order finding that Defendants have infringed the Asserted Patents directly, contributorily and/or by inducement, in violation of 35 U.S.C. § 271;

E. For an order finding that Defendants' infringement is willful;

F. For an order awarding Plaintiffs general and/or specific damages adequate to compensate Plaintiffs for the infringement by Defendant, including a reasonable royalty and/or lost profits, in amounts to be fixed by the Court in accordance with proof, including enhanced and/or exemplary damages, as appropriate, as well as all of the profits or gains of any kind made by Defendant from its acts of patent infringement.

G. An order requiring Defendants to disgorge all profits earned from their unlawful conduct.

H. An order awarding actual and compensatory damages according to proof at trial.

I. An order awarding exemplary and punitive damages to the extent allowed by law and in an amount according to proof.

J. An order awarding Plaintiffs costs of suit, prejudgment and post-judgment interest, and reasonable attorneys' fees.

K. That this Court award such further relief to which Plaintiffs may be entitled under the circumstances and which this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demands trial by jury for all causes of action, claims, or issues in this action that are triable as a matter of right to a jury.

Date: July 15, 2024

Respectfully submitted,

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