UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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AMAZON.COM, INC., AMAZON.COM SERVICES LLC,
AMAZON WEB SERVICES, INC., and AUDIBLE, INC.,
Petitioner

v.

AUDIO POD IP, LLC,
Patent Owner

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Case IPR2025-00777
U.S. Patent No. 9,319,720

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**DECLARATION OF JOHN MCCUE**

***Mail Stop "PATENT BOARD"***
Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

I, John McCue, hereby declare as follows.

1. I am over the age of 18, this affidavit is based on my personal knowledge, and if called upon to do so, I am prepared to testify as to its truth and accuracy.

2. I am currently retired from full-time work. From 2005 to present, I was have served as the Chief Technology Officer at Audio Pod Inc. ("Audio Pod").

3. I am a named inventor on many patents that were filed during my time at Audio Pod Inc. and originally assigned thereto. These patents include the following:

- U.S. Patent No. 8,738,740 ("the '740 patent");
- U.S. Patent No. 9,319,720 ("the '720 patent");
- U.S. Patent No. 9,729,907 ("the '907 patent");
- U.S. Patent No. 9,954,922 ("the '922 patent");
- U.S. Patent No. 10,091,266 ("the '266 patent");
- U.S. Patent No. 10,735,488 ("the '488 patent"); and
- U.S. Patent No. 10,805,111 ("the '111 patent")

4. My co-inventors on each of these patents are Robert McCue, Gregory Shostakovsky, and Glenn McCue.

5. I understand that these patents have been challenged in *inter partes* review proceedings at the United States Patent and Trademark Office Patent Trial

and Appeal Board (PTAB).

6. I started looking into audio book technology to help my mother continue to be able to experience books even though she was losing her eyesight. Together with my brothers, Robert McCue and Glenn McCue, as well as Gregory Shostakovsky, we invented a server-based, virtual approach to steaming audio across multiple devices. This ultimately became known as Audio Pod.

7. Robert, Glenn, Gregory, and I founded Audio Pod Inc. in 2005, based on our audio book technology. We filed several patent applications for this audio book technology, and several patents issued, including the patents listed above in paragraph 3. Our first provisional application was filed on December 13, 2005, as Application No. 60/749,632.

8. In 2006, we launched a subscriber-paid service to stream audiobooks to consumer devices.

9. In July 2007, we travelled to Brilliance Audio's Head Quarters in had a meeting with Amazon and Brilliance Audio, at their Headquarters in Grand Haven Michigan, as they had expressed interest about our technology. This meeting was originally scheduled for one hour with a small group.

10. We had a working product. We presented our working product and subscription model to the Amazon/Brilliance team. The meeting extended to the whole day, with more and more Amazon representatives joining us as the meeting

went on.

11. Numerous representatives (8 or 9 additional people) from Amazon and Brilliance Audio , joined in the afternoon and asked for a slower, repeated demonstration so they would not miss anything. When describing what we were going to show them, the opinion was expressed that "it will never work." At one point during the demonstration of the operational product and service, one of our explanations of the operation of the technology was met with the comment from one of the Amazon/Brilliance technical team members was "we never thought of using a central server" to facilitate the system.

12. After the meeting, Gregory sent a follow-up email, thanking the Brilliance Audio executive for their time and interest, and we received a "we will get back to you shortly" type of reply. We reached out repeatedly to follow up on what we had discussed, over 70 times between 2006 and 2012—between three and 25 times each year, however we have never heard back from the Brilliance/ Amazon organizations. Audio Pod does have phone logs showing that we reached out to various contacts both at Amazon and its affiliates.

13. In September of 2011, Mr. Steve Messere of Revenue Spark contacted Amazon via email on behalf of Audio Pod. That email is attached as Exhibit 1. He was following up on a telephone conversation with Mr. Eric Ayers, Business Development for Amazon.com. Mr. Messere thanked Mr. Ayers for taking his call.

Mr. Messere also went into detail describing Audio Pod Inc. technology and the potential opportunities for a business relationship.

14. Audio Pod continued its attempts to partner with Amazon into 2013. On December 27, 2012, Gregory sent a letter to Amazon identifying specific Intellectual Property owned by Audio Pod that we believed had a "marked similarity" with features of Amazon's Kindle product, and again there was no response forthcoming. That letter is attached as Exhibit 2.

15. Audio Pod continued to focus on obtaining issued patents between 2013 and 2019. With the ever-increasing media streaming market, Audio Pod knew it would need a full portfolio of patents to approach the large companies that dominated the market.

16. In 2020, they engaged a technology consultant, Jim Kosolowski, to assist in preparing to enforce its patents.

17. We also reached out to other companies in the audio book industry, but after Amazon acquired Audible in 2008, it was very difficult to compete. Amazon was a market giant at that point. It was common for us to present our technology and get the response "Amazon is already doing that" or concerns about having to compete with Amazon as a direct competitor.

18. Unfortunately, Gregory has passed away. Robert, Glenn, and I are all in our retirement years and each face health issues that may impact our ability to

meaningfully participate in defending our patent rights in the future.

19. In signing this declaration, I recognize that the declaration will be filed as evidence in an *inter partes* review before the Patent Trial and Appeal Board of the United States Patent and Trademark Office. I also recognize that I may be subject to cross-examination in the case and that cross-examination will take place within the United States. If cross-examination is required, I will appear for cross-examination within the United States during the time allotted.

20. I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Executed on this 13 day of June, in Ottawa, Canada.

John McCue

# Exhibit 1

**From:** Steve Messere[steve.messere@revenuespark.com]
**Sent:** Tue 9/20/2011 8:01:03 PM Eastern Daylight Time
**To:** ericay@amazon.com[ericay@amazon.com]
**Cc:** greg@audiopod.ca[greg@audiopod.ca]
**Subject:** AudioPod Technology Introduction

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Eric Ayers
Business Development
Amazon.com

Dear Eric,

Thank you again for taking my call today. As we discussed I'm enclosing information about a patent-pending technology designed to enhance ebook reading technology platforms.

I would like to Introduce AudioPod, a Canadian Software Development Company that has created a new category of rich media written/spoken word interaction allowing readers to experience audio and written texts as a seemlessly integrated media experience.

This groundbreaking approach has over six years of development and refinement. In Dec of 2006 the team of John McCue, Robert McCue, Gregory Shostakovsky and Glenn McCue filed US Patent application number 20080301318.

Here is the Patent Abstract:

A system, method and computer-readable code for segmenting an audio stream into a plurality of small digital audio files using gaps in the natural language of the audio stream is provided. The small digital audio files are transmitted, loaded, and played in a specific order, such that from the user's perspective, the audio stream is reproduced in an apparently seamless manner. This is done without reassembling the audio stream, either in whole or in part. The small digital audio files are created using natural language gaps, and are generally small enough to ensure that a first small digital audio file can be downloaded and played without significant delay, while successive small digital audio files are downloaded to be played in the future. Accordingly, the user receives audio-on-demand in a timely manner.

In addition to the patent application the AudioPod team has continued to refine the content authoring and end-user experiences.

Highlights of their integrated delivery/authoring platform include:

- A Comprehensive Cloud-based Content Delivery Technology Platform
- Dramatic reductions in Content Preparation (replacing an industry standard of one-week for audio works to just 4 hours)
- Robust and seamless end-user experiences allowing readers to move from listening to reading in near real-time with 100% continuity
- Broad spectrum of automatic wireless platform options for mobile devices insuring continuity and fidelity from 3G to WiFi and beyond

There are a number of potential applications for this technology including the introduction of natural human voice audio books being used in automobiles and other locations where reading can not be enjoyed, and at the same time experiencing the same uninterrupted continuity in the unabridged written words in traditional reading environments.

AudioPod is actively engaged in presenting this technology to the highest level decision makers in the industry. We are also aware of the possibility of new ePub standards for audio looking to accomplish a similar approach, however our prior art claims establish firm precedence.

We believe that Amazon, a leader and pioneer, would be an ideal home for this technology. We would like an opportunity to present our solution to Amazon for your consideration and to share with you additional information about our patent that can potentially provide the owner of this technology with significant strategic advantages over a number of potential competitors including a very well known consumer hardware company.

We are excited to engage Amazon in a conversation and as this writing we can currently offer a 14 business day window for open discussions.

Please feel free to contact me via email or phone for any further questions or to arrange for introduction and presentation with the AudioPod team. We are looking forward to hearing back from you, and to learn how you would like to proceed.

Sincerely,

Steve Messere
Revenue Spark, Inc.

917-512-3205
skype: steve.messere

www.revenuespark.com

Igniting Reliable - Repeatable - Revenue

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No virus found in this message.
Checked by AVG - www.avg.com
Version: 10.0.1410 / Virus Database: 1520/3909 - Release Date: 09/20/11

# Exhibit 2

**Audio Pod**

***Reinventing Digital Reading***

Kelly Jo MacArthur
VP of IP Acquisition and Investments
Amamzon.com Inc.
410 Terry Avenue North
Seattle, WA 98109-5210
U.S.A.

December 27, 2012

Dear Ms. MacArthur:

Without preamble, I would like to draw your attention to the latest Kindle product offering and the Intellectual Property owned by Audio Pod Inc.

In our opinion, there is a marked similarity between some of the newest features contained within the Kindle and some of our Intellectual property. Specifically in technology areas related to 'Whispersync for Voice' and 'Immersion Reading', among others.

All of the Audio Pod's IP claims have a priority date of December 2005. Our IP in the US includes one recently granted patent covering 'Segmentation and Transmission of Audio Streams' with a Continuation Application for this patent to preserve and expand unclaimed IP therein; and a Continuation In Part Application covering a 'System and Method for Rendering of Digital Content Using Time Offset' built on the previous application that is dated December 2005.
Additional patent applications for the 'Segmentation and Transmission of Audio Streams' were filed under PCT national phase in England, France and Germany.

Audio Pod Inc, including all of its Intellectual Property, is currently being marketed for acquisition.
It is our opinion that Amazon would benefit directly by acquiring our IP, in part, for the following reasons:

- Amazon receives the benefit of our 2005 priority date on all IP.
- Amazon prevents a competitor from acquiring our IP, avoiding possible future ramifications.
- Amazon can continue to expand the capabilities of its Kindle product offering using an additional demonstrable and proven technology.
- Amazon will secure and capitalize on a significant additional IP that is yet to be claimed under original priority date.
- Amazon will fully realize the revenue derived from the ownership of that IP.
- Amazon will effectively exclude its competition from deploying same or similar technologies within the ownership rights to our IP.

Attached, you will find a summary sheet containing information about Audio Pod Inc, and relevant patent and applications numbers.

In light of the latest Kindle product offering, I would like to suggest that you read through our patent and applications, and carefully consider their content and our offer to start the dialog.

As previously mentioned, Audio Pod Inc is positioned to be acquired. Should you wish to discuss this in further detail, it would be beneficial to do so without delay.

Sincerely,

Greg Shostakovsky
President and CEO
Audio Pod Inc.
greg@audiopod.ca

Audio Pod Inc is a technology research and development company founded in 2005 as a privately held Canadian Corporation. Our focus is the development of technology that delivers the ultimate literary experience to the consumer. Notwithstanding commitments related to shareholders equity, the company is self financed, debt free and without obligations. We are located in Ottawa, Ontario, Canada.

**Patents Granted**

US Patent Number: 8,285,809 - Issued: October 9, 2012
'Segmentation and Transmission of Audio Streams'

**Patents Pending**

US Patent Application: 13/313,393
'System and Method for Rendering Digital Content Using Time Offsets'
This is a CIP application derived from 12/096,933 preliminary set of claims, which resulted in US Patent 8,285,809.

US Patent Application: 13/588,084 'Transmission of Digital Audio Data'. This is a Continuation of 12/096,933 preliminary set of claims.

PCT/CA2006/002046 – 'Segmentation and Transmission of Audio Streams' (England, France, Germany).