

1 Ronald J. Schutz (*pro hac vice pending*)
RSchutz@robinskaplan.com
2 Cyrus A. Morton (*pro hac vice pending*)
CMorton@robinskaplan.com
3 Benjamin C. Linden (*pro hac vice pending*)
BLinden@robinskaplan.com
4 ROBINS KAPLAN LLP
800 LaSalle Avenue, Suite 2800
5 Minneapolis, Minnesota 55402
Tel: (612) 349-8500
6 Fax: (612) 339-4181

7 David Martinez (CSB # 193183)
DMartinez@robinskaplan.com
8 ROBINS KAPLAN LLP
2049 Century Park East, Suite 3400
9 Los Angeles, CA 90067-3208
Tel: 310-552-0130
10 Fax: 310-229-5800

11 **Attorneys for Plaintiff**
12 **Affinity Labs of Texas, LLC**

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 OAKLAND DIVISION

17	AFFINITY LABS OF TEXAS, LLC,)	Case No. 4:18-cv-03194
18	Plaintiff,)	COMPLAINT FOR PATENT INFRINGEMENT
19	v.)	
20	BLACKBERRY CORPORATION, BLACKBERRY LIMITED,)	DEMAND FOR JURY TRIAL
21	Defendants.)	
22	_____)	

23
24 **PLAINTIFF’S COMPLAINT FOR PATENT INFRINGEMENT**

25 Plaintiff Affinity Labs of Texas, LLC (“Affinity Labs”) for its causes of action against
26 Defendants, BlackBerry Corporation and BlackBerry Limited (collectively, “BlackBerry” and/or
27 “Defendants”), states and alleges on knowledge and information and belief as follows:
28

PARTIES

1
2 1. Plaintiff Affinity Labs is a Texas limited liability company having offices at 31884
3 RR 12, Dripping Springs, TX 78620.

4 2. On information and belief, BlackBerry Limited is a Canadian company having its
5 principal place of business at 2200 University Avenue East, Waterloo, Ontario, Canada N2K
6 0A7.

7 3. On information and belief, BlackBerry Corporation is a Delaware corporation with
8 its principal place of business at 5000 Riverside Drive, Suite 100E, Irving, TX 75039.

JURISDICTION

9
10 4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§
11 1331 and 1338(a), in that this action arises under the federal patent statutes, 35 U.S.C. §§ 271 and
12 281-285.

13 5. This Court has personal jurisdiction over BlackBerry. Upon information and
14 belief, BlackBerry has committed and continues to commit acts giving rise to this action within
15 California and within this judicial district and BlackBerry has established minimum contacts
16 within the forum such that the exercise of jurisdiction over BlackBerry would not offend
17 traditional notions of fair play and substantial justice. For example, BlackBerry has committed
18 and continues to commit acts of infringement in this District, by among other things, offering to
19 sell and selling products that infringe the Asserted Patents, including smartphones. In conducting
20 its business in California and this judicial district, BlackBerry derives substantial revenue from
21 infringing products being sold, used, imported, and/or offered for sale or providing service and
22 support to BlackBerry's customers in California and this District, and will continue to do so
23 unless enjoined by this Court.

VENUE

24
25 6. Venue in the Northern District of California is proper pursuant to 28 U.S.C. §§
26 1391(b) and (c) and 1400(b) because BlackBerry has committed acts within this judicial district
27 giving rise to this action, BlackBerry has and continues to conduct business in this judicial
28 district, including one or more acts of selling, using, importing, and/or offering for sale infringing

1 products or providing service and support to BlackBerry's customers in this District. In addition,
2 BlackBerry Corporation has regular and established places of business in this District as
3 evidenced by the website located at the URL <https://us.blackberry.com/company/about-us/maps>.
4 BlackBerry Limited is not a resident of the United States and therefore may be sued in any
5 judicial district.

6 7. Venue in this District is also proper because of judicial economy. Judge Gonzalez-
7 Rogers presided over *Affinity Labs of Texas, LLC v. Blackberry Limited, et al.*, Civil Action No.
8 14-cv-03031; *Affinity Labs of Texas, LLC v. Samsung Electronics Co., Ltd., et al.*, Civil Action
9 No. 14-cv-02717; and *Affinity Labs of Texas, LLC v. Samsung Electronics Co., Ltd., et al.*, Civil
10 Action No. 14-cv-03030. The Asserted Patents were collectively at issue in the three proceedings.

11 **BACKGROUND**

12 **Affinity Labs**

13 8. Affinity Labs restates and realleges each of the allegations set forth above and
14 incorporates them herein.

15 9. Affinity Labs was founded in 2008 by Russell White and Harlie Frost.

16 10. Russell White is a successful entrepreneur and patent attorney. Mr. White grew up
17 in Houston, Texas, and has an undergraduate degree in mechanical engineering from Texas
18 A&M. Mr. White also graduated from the University of Temple Law School. After earning his
19 law degree, Mr. White co-founded SBC Knowledge Ventures, an entity within AT&T.

20 11. Mr. White is also a prolific inventor. Mr. White is listed as an inventor on at least
21 twenty-five separate United States patents.

22 12. On March 28, 2000, Mr. White and Kevin R. Imes filed a detailed patent
23 application, No. 09/537,812 ("the '812 application") with the United States Patent and Trademark
24 Office ("PTO").

25 13. The '812 application broadly addressed the problem of accessing, managing, and
26 communicating digital audio and video content. In doing so, the '812 application disclosed a
27 number of inventions relating to creating a new media ecosystem with a portable electronic audio
28 device such as an MP3 player or cell phone at its center.

1 14. The '812 application also disclosed the ability to download music and playlists
2 from an online store, or stream Internet radio, to the portable electronic device, and then connect
3 the device to a second device such as an automobile with a display. As disclosed in the '812
4 application, the music available on the portable device can then be displayed and selected using
5 controls on an automobile stereo system, and played through the speakers.

6 15. Mr. White and Mr. Imes made this disclosure in the '812 application over a year
7 before the iPod was released in October 2001, approximately 3 years before the iTunes Store sold
8 its first song, 7 years before the first iPhone was sold, 8 years before the App Store was launched,
9 and 8 years before the functionality of having the music available on a portable device be
10 displayed and selected using controls on an automobile stereo system and played through the
11 speakers was available using an iPhone and some luxury vehicles. This same connective
12 functionality did not become available on Android phones until more than 9 years after Mr. White
13 and Mr. Imes filed the '812 application.

14 16. Resulting from the '812 application, on March 6, 2007, the PTO issued United
15 States Patent No. 7,187,947 entitled "System and Method for Communicating Selected
16 Information to an Electronic Device" ("the '947 patent"), a copy of which is attached as Exhibit
17 A.

18 17. On September 21, 2015, an Inter Partes Reexamination Certificate issued for the
19 '947 patent, cancelling claims 1-42 and issuing new dependent claim 43.

20 18. On December 15, 2009, the PTO issued United States Patent No. 7,634,228,
21 entitled "Content Delivery System and Method" ("the '228 patent"), a copy of which is attached
22 as Exhibit B. The '228 patent was issued from a continuation application claiming priority to the
23 '812 application.

24 19. On September 10, 2013, the PTO issued United States Patent No. 8,532,641,
25 entitled "System and Method for Managing Media" ("the '641 patent"), a copy of which is
26 attached as Exhibit C.

27 20. The '947, '228, and '641 patents (collectively, "the Asserted Patents") are all in
28 the same patent family and the Asserted Patents all claim priority to the '812 application, which

1 was filed with the PTO on March 28, 2000 and issued as the '947 patent.

2 21. The Asserted Patents have been cited by major businesses in the computer,
3 software, communications, automotive, and mobile industries. The Asserted Patents have been
4 cited in at least 123 patents and publications, with many of these patents assigned to corporations
5 such as Apple, AT&T, Toyota, Google, Nokia, Bose, IBM, Hewlett-Packard, and Volkswagen.

6 22. Affinity Labs holds legal title, by assignment, to all of the Asserted Patents.

7 23. Affinity Labs holds legal title, by assignment, to the Asserted Patent.

8 **The Accused Devices**

9 24. In the last six years, BlackBerry has and continues to design, develop,
10 manufacture, import, sell, and/or offer for sale smartphones. These smartphone products include,
11 but are not limited to, the Aurora, Bold 9790, Bold 9900, Bold 9930, Classic, Curve 9310, Curve
12 9315, Curve 9360, DTEK50, DTEK60, KEYone, Leap, Motion, P'9918, P'9982, P'9983,
13 Passport, Playbook, Priv, Q10, Z10, Z3, and Z30.

14 25. BlackBerry's smartphones each have a display and memory. For example, the
15 DTEK50 smartphone has a 5.2-inch display, three gigabytes of RAM, and 16 gigabytes of flash
16 memory.

17 26. BlackBerry has designed, developed, manufactured, imported, sold, and/or offered
18 for sale smartphones loaded with the BlackBerry Operating System when sold. For example,
19 when sold, the BlackBerry Z10 smartphone was loaded with version 10 of the BlackBerry
20 Operating System.

21 27. BlackBerry also has and continues to design, develop, manufacture, import, sell,
22 and/or offer for sale smartphones that are loaded with the Android Operating System when sold.
23 For example, when sold, the DTEK50 is loaded with the Android Operating System.

24 28. BlackBerry's smartphones have the ability to play music stored locally on the
25 device. For example, the BlackBerry Z10 and DTEK50 smartphones have the ability to play
26 digitally compressed songs.

27 29. BlackBerry's smartphones allow users to navigate through locally saved songs by
28 name. For example, the BlackBerry Z10 and DTEK50 smartphones allow users to navigate

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.