

1 Frank E. Scherkenbach (SBN 142549 / scherkenbach@fr.com)
Adam J. Kessel (*pro hac vice* application to be filed / kessel@fr.com)
2 Proshanto Mukherji (*pro hac vice* application to be filed / mukherji@fr.com)
3 Jeffrey Shneidman (*pro hac vice* application to be filed / shneidman@fr.com)
FISH & RICHARDSON P.C.
4 One Marina Park Drive
Boston, MA 02210
5 Telephone: (617) 542-5070
Facsimile: (617) 542-8906
6

7 Michael R. Headley (SBN 220834 / headley@fr.com)
FISH & RICHARDSON P.C.
8 500 Arguello Street, Suite 500
Redwood City, CA 94063
9 Telephone: (650) 839-5070
Facsimile: (650) 839-5071
10

11 Attorneys for Plaintiffs
BYTEDANCE INC., TIKTOK INC., and TIKTOK PTE. LTD.

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

14
15
16 BYTEDANCE INC., TIKTOK INC., AND
17 TIKTOK PTE. LTD.

18 Plaintiffs

19 v.

20 TRILLER, INC.

21 Defendant.
22
23
24

Case No. 3:20-cv-7572-TSH

FIRST AMENDED COMPLAINT FOR

**(1) DECLARATORY JUDGMENT OF
NON-INFRINGEMENT OF U.S.
PATENT NO. 9,691,429**

**(2) INJUNCTION AGAINST TRILLER TO
CEASE INFRINGEMENT OF U.S.
PATENT NOS. 9,648,132, 9,992,322, &
9,294,430**

**(3) DAMAGES FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

25
26 Plaintiffs Bytedance Inc. (“BDI”), TikTok Inc. (“TTI”), and TikTok Pte. Ltd. (“TTPL”)
27 (collectively, “Plaintiffs”) hereby bring this First Amended Complaint against Defendant Triller,
28 Inc. (“Triller” or “Defendant”) as follows:

NATURE OF ACTION

1
2 1. Plaintiffs BDI and TTI bring this action for a declaratory judgment of non-
3 infringement of U.S. Patent No. 9,691,429 (“the ’429 patent”). Plaintiffs TTI and TTPL also seek
4 an injunction against Triller and damages for Triller’s past and ongoing infringement of U.S. Patent
5 Nos. 9,648,132 (“the ’132 patent”), 9,992,322 (“the ’322 patent”), and 9,294,430 (“the ’430
6 patent”).

7 2. Plaintiffs BDI and TTI seek a declaratory judgment that they do not infringe any
8 claim of the ’429 patent (attached as Exhibit A). Plaintiffs TTI and TTPL also seek remedies in
9 equity and law for Triller’s past and ongoing infringement of TikTok’s patented intellectual property
10 as set forth below.

11 3. Plaintiffs are technology companies that provide and support a variety of mobile
12 software applications that enable people around the world to connect with, consume, and create
13 entertainment content, including via an application called “TikTok.” TikTok is a mobile software
14 application that millions of Americans, including many in this judicial district, use to create and
15 share short videos composed of expressive content.

16 4. Defendant Triller is the developer, distributor, and operator of an application called
17 “Triller” which it characterizes as “an entertainment platform built for creators.”¹ Defendant Triller
18 has alleged that TikTok infringes the ’429 patent, which is not correct. To the contrary, it is Triller
19 that improperly is infringing TTPL and TTI intellectual property, including by Triller’s past and
20 ongoing infringement of the ’132 patent, ’322 patent, and ’430 patent, which includes acts of
21 infringement in this judicial district.

Triller’s Accusations Against TikTok Are Without Merit

22
23 5. On July 29, 2020, Triller filed a lawsuit against the entities TikTok Inc. and
24 Bytedance Ltd. in the Western District of Texas (C.A. No. 20-cv-00693) (“the Texas Litigation”)
25 alleging that those entities “directly and indirectly infringe the [’429] Patent by making, using,
26 offering for sale, selling, and importing the popular iOS and Android software application known
27

28 ¹ <https://apps.apple.com/us/app/triller-social-video-platform/id994905763> (accessed Oct. 27, 2020).

1 as ‘TikTok.’” *Id.*, Dkt. No. 1 ¶3. Triller has alleged that the “Accused Products” in that lawsuit (the
2 “Accused TikTok Products”) are “software products [that] are available for iOS and Android hand-
3 held or tablet devices and are distributed under the TikTok brand name.” *Id.*, ¶14. Triller has alleged
4 that “making, using, offering for sale, selling and/or importing the Accused Products” constitutes
5 patent infringement and violates at least 35 U.S.C. § 271(a), (b), and (c). *Id.* ¶34 *et seq.* Triller has
6 also alleged that various training videos, demonstrations, brochures, and user guides, which are
7 created by BDI or TTI, instruct users of the TikTok apps to infringe the ’429 patent. *Id.* Triller has
8 alleged that making the Accused TikTok Products (among other acts) infringes at least claims 1, 3,
9 4, 5, 6, and 7 of the ’429 patent. *Id.*

10 6. Notwithstanding Triller’s allegations in the Texas Litigation, that district is not a
11 proper forum for a dispute concerning the Accused TikTok Products. Bytedance Ltd., a defendant
12 in that case, is a holding company based outside of the United States that does not have employees
13 or property in Texas. TTI, the other defendant in that case, has no employees or facilities in the State
14 of Texas and, more specifically, does not have any regular and established place of business in that
15 forum, and thus is not subject to venue under the Supreme Court’s decision in *TC Heartland LLC*
16 *v. Kraft Foods Group Brands LLC*, 581 U.S. ___, 137 S. Ct. 1514 (2017). BDI and TTI thus bring
17 the instant action seeking declaratory judgment in a proper forum—in the state where the relevant
18 parties are based, and in the judicial district where a substantial part of the events or omissions
19 giving rise to Triller’s alleged infringement claims have occurred and continue to occur.

20 7. BDI and TTI are the only companies based in the United States responsible for
21 developing, providing, and supporting the Accused TikTok Products. Triller’s actions and
22 allegations have created a real and immediate controversy between Triller, BDI, and TTI as to
23 whether the Accused TikTok Products infringe any claim of the ’429 patent. Triller’s lawsuit and
24 statements that “making” the Accused TikTok Products infringes the ’429 patent demonstrate that
25 it is highly likely that Defendant Triller will assert infringement against BDI in addition to its
26 previous allegations against TTI. In the meantime, the cloud of Triller’s allegations, including that
27 making the Accused TikTok Products infringes the ’429 patent, hangs over BDI and TTI.

28

1 8. As set forth herein, BDI and TTI do not infringe and have not infringed the '429
 2 patent. Therefore, an actual and justiciable controversy exists as to whether BDI and TTI's Accused
 3 TikTok Products infringe any claim of the '429 patent. A judicial declaration is necessary to resolve
 4 the real, immediate, and justiciable controversy concerning these issues and to determine the
 5 respective rights of the parties regarding the '429 patent. BDI and TTI respectfully seek a judicial
 6 determination that the '429 patent is not directly or indirectly infringed by BDI and TTI, including
 7 by their products and/or services.

8 **Triller Infringes TikTok's Patents**

9 9. Contrary to Triller's assertions, it is Triller that is using TikTok's innovative,
 10 valuable, and patented functionality. Triller's software application for the iOS operating system and
 11 Triller's software application for the Android operating system (collectively, the "Infringing Triller
 12 Products") infringe several TikTok patents, including the '132 patent, '322 patent, and '430 patent,
 13 which are owned by TTPL and exclusively licensed to TTI in the United States. The inventions
 14 claimed and disclosed in TTPL's multiple patents go to the heart of the Infringing Triller Products.



TikTok



Triller

10. For example, the '132 patent, '322 patent, and '430 patent are each titled "Method of enabling digital music content to be downloaded to and used on a portable wireless computing

1 device.” These patents claim a priority date of 2006, which predates the founding of Triller by nearly
2 a decade.

3 11. For example, TikTok owns—and Triller infringes—the invention claimed in claim
4 30 of the ’322 patent, i.e., a “software application [that] is executable on a smartphone device ... (a)
5 in which the software application allows the end-user to, over a wireless connection, create on a
6 remote server one or more user accounts with associated profiles for that end-user, wherein the
7 profiles are editable; and (b) the software application allows the end-user to, over the wireless
8 connection, view profiles created by other users of a service; and (c) the software application allows
9 the end-user to, over the wireless connection, interact with other users of the service; and (d) the
10 software application allows the end-user to, over the wireless connection, send and receive messages
11 to and from other users of the service; and (e) the software application allows the end-user to, over
12 the wireless connection, link his or her user account on the remote server to user accounts on the
13 remote server of other users of the same service or of other services.”

14 12. As a further example, TikTok owns—and Triller infringes—the invention claimed
15 in claim 35 of the ’322 patent, where that “software application is a music application wherein the
16 software application uses track meta-data that is formed as a separate meta-data layer and defines
17 attributes of tracks, the meta-data being external to a music track to make sharing and browsing of
18 track information possible without needing to distribute the related music track files.”

19 13. As a still further example, TikTok owns—and Triller infringes—the invention
20 claimed in claim 51 of the ’322 patent, where “the software application [is] such that the service
21 provides over a wireless connection, recommendations to the user of people, media content or any
22 other items which the user might like, based on the user’s viewing ... history, on the viewing ...
23 history of any other users or on any other criteria.”

24 14. As their titles suggest, TikTok’s other patents asserted in this litigation, specifically
25 the ’132 and ’420 patents, cover other aspects of “enabling digital music content to be downloaded
26 to and used on a portable wireless computing device,” which is critical functionality to Triller.

27 15. As set forth herein, Triller has illegally practiced, and continues to practice and
28 infringe claims of the ’132, ’332, and ’430 patents, all in violation of 35 U.S.C. § 271.

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.