

Apple's New iPhone Greeted With Patent Suit

By **Megan Leonhardt**

Law360, New York (October 18, 2011, 7:36 PM ET) -- Personal Audio LLC lodged a suit Friday in Texas alleging Apple Inc.'s new iPhone infringes a patent for playlist technology, after a judge's ruling that an \$8 million jury verdict against the technology giant did not apply to the patent.

Texas-based Personal Audio claims that Apple violates U.S. Patent Number 7,509,178, titled "Audio program distribution and playback system," with the release this month of the iPhone 4S and iOS 5 operating system. A Texas federal judge ruled in August the '178 patent was not infringed by Apple's older versions of the iPhone and other portable devices.

"Personal Audio has been injured and has been caused significant financial damage as a direct and proximate result of Apple's infringement of the '178 patent," the complaint said.

A Texas federal jury found in July that California-based Apple infringed both the '178 and another Personal Audio playlist patent, U.S. Patent Number 6,199,076, and affirmed that the two patents were valid. The patents cover playlist technology used in music players, which are integral to Apple's various portable devices.

In August, however, U.S. District Judge Ron Clark granted Apple's motion for judgment as a matter of law that its accused products — the iPod nano, iPhone 4 and iPad 2 — did not infringe the '178 patent. The judge said the patent's claims were not the same as Apple's music players' ability to initiate a data transfer under the doctrine of equivalents.

The jury's finding that Apple infringed the '076 patent, however, stuck.

In Friday's complaint, Personal Audio claims that Apple induces customers to infringe the '178 patent because the defendant's devices automatically prompt users to update their devices' old systems to the infringing iOS 5 system.

The suit seeks a judgment that Apple infringes the '178 patent and is liable for damages. It also asks the court for a permanent injunction, prejudgment interest, and attorneys' fees and costs.

Representatives for Personal Audio and Apple did not immediately respond to requests for comment Monday.

Personal Audio began its fight against Apple's alleged infringement in June 2009, when it filed suit alleging Apple and several other companies, including Sirius XM Radio Inc., Coby Electronics Corp. and Archos Inc., infringed the '178 and '076 patents.

When the verdict came down, Apple was the only remaining defendant in the suit. Sirius was dismissed from the case in July 2010, while Coby and Archos struck a settlement in May 2010.

Personal Audio has appealed a judge's denial of a new trial and other attempts to increase the \$8 million damages award in the case.

The patent-in-suit in the current matter is U.S. Patent Number 7,509,178.

Personal Audio is represented by Ronald J. Schutz, Jake M. Holdreith, Cyrus A. Morton, David A. Prange, Patrick M. Arenz, Annie Huang and Daniel R. Burgess of Robins Kaplan Miller & Ciresi LLP and Lawrence Louis Germer and Charles W. Goehring Jr. of Germer Gertz LLP.

Counsel information for Apple was not immediately available.

The case is Personal Audio LLC v. Apple Inc., case number 1:11-cv-00531, in the U.S. District Court for the Eastern District of Texas.

--Additional reporting by Richard Vanderford and Melissa Lipman. Editing by Chris Giganti.

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