

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK**

<p>MUZIK INC., a Delaware corporation;</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>PERKINS COIE LLP, a Washington partnership; PERKINS COIE CALIFORNIA, P.C., a California corporation and DOES 1 through 10 inclusive,</p> <p style="text-align: center;">Defendants.</p>
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Date Purchased: January 17, 2020

Index No. \_\_\_\_\_

**SUMMONS**

**Plaintiff designates New York County as  
the place of trial.**

**Venue is proper pursuant to CPLR §503**

TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer on Plaintiff's attorney within twenty (20) days after the service of this summons, exclusive of the day of service, or within thirty days (30) after the service is complete if this summons is not personally delivered to you within the State of New York. Venue is proper for this action, because Plaintiff is informed and believes, that Defendant Perkins Coie LLP has offices in New York City, and committed some, if not all, of the acts alleged in the complaint in New York City. In case of your failure to answer, judgment will be taken against you by default for the relief demanded herein.

Dated: January 17, 2020

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**Index No.** \_\_\_\_\_

**COMPLAINT**

**DEMAND FOR JURY TRIAL**

**COMPLAINT**

Plaintiff Muzik, Inc. (“Muzik” or “Plaintiff”) alleges as follows:

**INTRODUCTION**

1. Perkins Coie, LLP (“Perkins Coie” or “Defendant”) attorney, Sean Grygiel (“Grygiel”) tried to cover up repeated failures in seeking and securing patents, at one point by manufacturing false patent application numbers, costing its client, Muzik, hundreds of millions of dollars in lost royalty rights and millions of dollars in fruitless development costs. As a consequence, Muzik unwittingly disclosed key technology without the protection that Grygiel and Perkins Coie represented to be in place, losing out in revenue streams from technologies that are currently being widely used in “smart” electronic devices. Relying on Grygiel’s written assurances, Muzik used significant capital and energy in developing products that were unprotected, instead of focusing on its other inventions that it is now exploiting.

2. In approximately 2012, Muzik’s Chief Executive Officer and primary inventor, Jason Hardi (“Hardi”), developed an overarching design for a fully-integrated, connected, remote-control headphone system. The headphones system incorporated the use of a processor which facilitated a voice and touch control system to allow the user to connect to, and operate, a variety

of applications and programs. Many of the underlying ideas and designs, such as the ability to initiate commands in connected devices with voice control, would later be used in many popular “smart” devices.

3. Starting in 2012, Muzik retained Grygiel to obtain patents for not only the broad, overarching, idea of voice and touch activated “smart” headphones, but to obtain patents for the technologies underlying the headphone system as well as designs and features that derived from the core concepts.

4. While Grygiel’s representation of Muzik began while Grygiel worked at Fish & Richardson, LLP, in 2014, Grygiel persuaded Muzik to retain Perkins Coie after he joined the firm as a Partner. Specifically, Grygiel represented to Muzik that it would benefit the company to follow him to Perkins Coie as a client, given Grygiel’s familiarity with and unique understanding of Muzik’s patent portfolio, his encompassing strategy for protecting all of Muzik’s inventions, and his ongoing awareness of the company’s engineering and design development for purposes of continuity and efficiency.

5. However, retaining Perkins Coie was a fatal mistake for Muzik. Throughout Perkins Coie’s representation of Muzik, it repeatedly breached its fiduciary duties of loyalty and its duty of care owed to Muzik while collecting hundreds of thousands of dollars in fees. This included, among numerous other things:

a. Failing to file applications that would have protected the detailed overarching design shared by Muzik, including products derived from that design, or advising as to why such protection would not be available;

b. Failing to communicate critical developments in the patent application process, including USPTO actions;

c. Failing to include critical information regarding Muzik’s technology in provisional patent applications;

d. Representing directly to Muzik’s investors that patent protection had been obtained or sought, with no prior art complications or impediments, on key elements of Muzik’s product

designs;

e. Allowing certain provisional applications that were filed to lapse, without any notice to Muzik or consent from the client;

f. Claiming to file certain patent applications that were never filed, and then manufacturing fake patent application numbers to induce Muzik into thinking the application were, in fact, filed.

6. Had Grygiel and Perkins Coie acted within the standard of care, Muzik would have the rights to royalties, and the advantage of being first to market, on core technologies in the rapidly growing field of connected device controls.

### **THE PARTIES**

7. Plaintiff Muzik is, and at all times relevant was, a Delaware corporation, currently engaged in business in Los Angeles County, California.

8. Upon information and belief, Defendant Perkins Coie is, and at all times relevant herein was, a Washington limited liability partnership engaged in business in numerous different cities and states in the United States. For purposes of the services rendered to Plaintiff, Perkins Coie provided those legal services out of its New York City offices.

9. Upon information and belief, for the relevant conduct by Grygiel, an individual and an attorney, Grygiel and Perkins Coie held Grygiel out as a Partner of the law firm with ostensible authority to act on its behalf in providing legal services out of its New York City offices.

10. Plaintiff is unaware of the true names and capacities, whether individual, corporate, associate or otherwise, of the Defendants named herein as Does 1 through 10, inclusive, and therefore sues those defendants by such fictitious names. Plaintiff will seek leave to amend this Complaint to allege the true names and capacities of such Doe defendants when the same have been ascertained. Plaintiff is informed and believes, and thereon alleges, that each of the defendants designated as a Doe is responsible in some manner for the events and happenings referred to herein and proximately thereby caused damages and injury to Plaintiff.

### **JURISDICTION AND VENUE**

11. Jurisdiction is proper pursuant to CPLR § 301, because Perkins Coie regularly does, or transacts, business in the State of New York, and because this action arises out of tortious conduct committed by Perkins Coie within the State of New York.

12. New York County is the proper venue for this action pursuant to CPLR §503, because Plaintiff is informed and believes that Defendant Perkins Coie has offices in New York County, and committed some, if not all, of the acts alleged herein in New York County.

### **GENERAL ALLEGATIONS**

#### **A. Muzik's IP:**

13. Muzik developed an overarching design for a fully-integrated, connected, remote-control headphone system. The headphones system incorporated using a processor which facilitated a voice and touch control system to allow the user to connect to, and operate, a variety of applications and programs. Many of the underlying technologies would later be used in many popular "smart" devices. These technologies included:

- a. an interconnected speaker for accepting input and controlling a second interconnected speaker ("Interconnected Speaker");
- b. a pair of headphones that could control a remote device (such as a mobile phone) by sensing finger tap(s) on the headphone ("Finger Tap Controls");
- c. a system and method for programming and using buttons for translating gestures into a command on a wearable (headphone) device, and transmitting that command to a remote device (mobile phone) to act upon the command;
- d. a system and method for associating input on a remote or wearable device, such as touch, finger-tap, or voice input, translating the input into a short message, signal, or command, transmitting that short message, signal or command to a base device, such as a mobile phone or smart speaker, and executing a command ("Short Message Commands Invention").

14. Each of these technologies has specific patentable components. Based on discussions with Grygiel, Muzik understood these technologies were to be covered by 11 separate patents. For the purposes of this Complaint, the technologies covered by the 11 patents shall be referred herein as the “Muzik IP.”

**B. Muzik Retains Grygiel; Discloses Specifications Of The Muzik IP For Patent Prosecution:**

15. Muzik first retained Grygiel while he was working at Fish & Richardson, LLP. Grygiel was retained to obtain patents for not only the broad, overarching, idea of voice and touch activated “smart” headphones, but also to obtain patents for the technologies underlying the headphone system as well.

16. During this time, Muzik disclosed significant information to Grygiel regarding the Muzik IP. This included detailed specification drafts of each of the technologies, as well as weekly calls where Muzik shared additional details and solutions that Grygiel claimed he needed to file provisional applications.

17. By November 14, 2014, Grygiel started working at Perkins Coie, and brought in Muzik as a client. Grygiel represented to Muzik that it would benefit the company to follow him to Perkins Coie as a client, given his familiarity with Muzik’s patent portfolio, strategy, and engineering and design development for purposes of continuity and efficiency. Accordingly, Muzik signed a Representation Agreement with Perkins Coie. After Grygiel convinced Muzik to follow him to Perkins Coie, Muzik continued to share detailed information on its inventions with Grygiel and others at Perkins Coie, incurring approximately \$1 million in fees for work done by Perkins Coie.

18. In or around the same time, Muzik began discussions with several major investors centered on the Muzik IP. Muzik made Grygiel aware of these discussions to emphasize the importance of obtaining patents for the Muzik IP. Grygiel himself participated in discussions with potential investors, some of whom actually invested in Muzik, and represented that Muzik’s patent portfolio was secure.

19. Unfortunately, however, Grygiel's representation of Muzik during his time at Perkins Coie was marred with a lack of communication, incomplete legal work, and at times outright misrepresentations. This included failing to disclose significant USPTO actions on the Muzik IP, letting provisional applications expire, and manufacturing information to conceal his failures.

20. For example, in December of 2014, Muzik's Vice-President of Strategic Operation, Chip Hardt ("Hardt"), was scheduled to attend a conference where he was invited to discuss discrete portions of the Muzik IP, called Drum Sticks. Grygiel advised Muzik that Hardt could discuss the "Drum Stick" technology at the conference because a patent application would be filed before then. However, a patent application for the Drum Stick technology was not filed before the conference.

21. Similarly, in November of 2015, Grygiel failed to inform Muzik that one of its patent applications related to the Short Message Commands Invention was rejected due to a prior art reference. Instead of notifying Muzik of this development so it could add information to overcome any prior art barrier, Grygiel instead simply kicked the can down the road with a continuation application.

22. Perhaps most egregiously, while at Perkins Coie, Grygiel engaged in a pattern and practice of misrepresenting when – and in some cases if – certain patent applications were filed.

23. For example, in November of 2015, Muzik first learned that four of the more critical patentable technologies, known as the "Core Four," which describes technologies for the hardware, connectivity user interface, moments functionality, and chat functionality for Muzik's headphones had not yet been filed. These technologies were to have related back to the original, broader, patent filings that Perkins and Grygiel were to have originally filed and refined.

24. Nonetheless, on November 16, Muzik instructed Grygiel to get the appropriate applications filed "ASAP" and once again reiterated the importance of protecting its IP portfolio to its ability to raise funds and run a business. On November 19, Grygiel said that he was ready to file the Core Four applications.



25. On December 23, Grygiel provided Muzik a summary of its IP, listing the Core Four Applications that would incorporate prior provisional applications to result in “approximately 12 quality utility patent applications.” Shortly thereafter, in a written communication to Muzik, Grygiel identified the Core Four applications with numbers 14/982,741, 14/982,749, 14/982,844 and 14/982,863.

26. Grygiel continued to represent that the Core Four applications were filed all the way until Muzik terminated its relationship with Grygiel.

27. However, Grygiel’s repeated representations that patent application were filed for the Core Four technologies were just false. The Core Four applications never received application numbers. Indeed, the applications were never filed at all, and upon and information and belief, Grygiel provided false application numbers to Muzik to conceal his failure to file the applications.

28. Muzik only discovered this fact after Perkins Coie had turned over all the client papers and files to Muzik’s new patent counsel.

29. As a direct and proximate result of the foregoing acts and omissions of Defendants, Plaintiff has been damaged in an amount not currently known, but in a sum of not less than \$150,000,000.00.

### TOLLING

30. Plaintiffs incorporate by reference Paragraphs 1 through 29, inclusive, as if fully set forth herein.

31. Perkin Coie continued to represent Muzik in representing its interests in its IP, including with respect to the Core Fore patent applications and other Muzik IP, until the final termination of the parties’ relationship in or around October 2017.

32. On December 27, 2018, the parties entered an agreement (the “Tolling Agreement”) whereby, in exchange for an agreement by both parties not to commence any litigation relating to the legal services provided by Defendant while the Tolling Agreement was in place, the parties agreed to toll the statute of limitations for any and all potential claims and causes of action, including, but not limited to, claims for professional negligence, breach of written

contract, breach of oral contract, breach of the implied covenant of good faith and fair dealing, and/or breach of fiduciary duty, that arose from or should be construed to have arisen from legal services Perkins Coie provided Muzik with respect to various patent and other intellectual property matters.

33. Pursuant to the terms of the Tolling Agreement, the parties agreed to toll the relevant statutes of limitations from the effective date of the agreement, December 27, 2018, until the earlier of (a) notice of termination of the Tolling Agreement; or (b) six (6) months from the effective date of the agreement.

34. The terms of the Tolling Agreement also provided that the agreement could be extended in writing signed by the parties. Pursuant to this term, the parties mutually agreed to extend the Tolling Agreement six times. The first amendment to the Tolling Agreement was made on June 27, 2019, and extended the tolling period until August 27, 2019. The second amendment to the Tolling Agreement was made on August 22, 2019, and extended the tolling period until October 28, 2019. The third amendment to the Tolling Agreement was made on October 23, 2019, and extended the tolling period until December 6, 2019. The fourth amendment to the Tolling Agreement was made on December 6, 2019, and extended the tolling period until December 20, 2019. The fifth amendment to the Tolling Agreement was made on December 20, 2019, and extended the tolling period until January 3, 2020. The sixth amendment to the Tolling Agreement was made on December 30, 2019, and extended the tolling period until January 17, 2020.

35. The Tolling Agreement terminated on January 17, 2020.

### **FIRST CAUSE OF ACTION**

#### **Legal Malpractice**

#### **(Plaintiff against Perkins Coie and Does 1-10)**

36. Plaintiff incorporates by reference Paragraphs 1 through 35, inclusive, as if fully set forth herein.

37. Starting in 2012, Plaintiff retained Grygiel to obtain patents for technologies underlying a complex voice and touch activated, inter-connected, headphone systems. When

Grygiel was hired by Perkins Coie in 2014, he persuaded Muzik to allow him to continue representing them in obtaining the necessary IP protection. Accordingly, Muzik and Perkins Coie entered into a Representation Agreement (the “Agreement”) with Perkins Coie, which is a valid and enforceable contract.

38. Under the Agreement, Perkins Coie agreed to represent Muzik in its endeavors to obtain patent protection for the Muzik IP with reasonable care and diligence.

39. As Muzik’s attorney, Perkins Coie owed Muzik a duty to act reasonably in obtaining patent protection for Muzik’s IP. In rendering its services, Perkins Coie fell woefully below the standard of care for attorneys providing the legal work and guidance for which Perkins Coie billed Muzik.

40. Perkins Coie failed to exercise the care, skill, and diligence commonly possessed and exercised by members of the legal profession in, among other things:

a. Filing inadequate patent applications based on the information provided by Muzik that compromised the nature and scope of the protections to which Muzik would otherwise have been entitled;

b. Failing to adequately advise Muzik as to whether or not prior art might impede or prevent patent protections that Muzik sought to procure;

c. Failing to communicate critical developments in the patent application process, including USPTO actions;

d. Failing to include critical information regarding Muzik’s technology in provisional patent applications;

e. Allowing what provisional applications that were filed to lapse without any notice to Muzik;

f. Claiming to file patent applications that were not filed, and then manufacturing fake patent application numbers.

41. By virtue of the attorney/client relationship between Perkins Coie and Muzik, Perkins Coie owed a duty to Muzik to use reasonable care in obtaining patent protection for

Muzik's IP. Perkins Coie failed in its duty to use the care exercised by a reasonable patent attorney under the same or similar circumstances, including as described in Paragraph 40.

42. Perkins Coie's incompetent legal representation, including as described in Paragraph 40, constitutes legal malpractice.

43. As a direct and proximate result of Perkins Coie's legal malpractice, Muzik has suffered actual damages, including, but not limited to, the loss of rights to royalties from Muzik IP and the advantage of being first to market on core technologies contained within the rapidly growing field of connected device controls. Muzik has lost valuable rights associated with its IP as these technologies, which Perkins Coie purported to have protected with patent applications, have since been embedded in a number of popular products including the Amazon Echo Dot, Apple Air Pods, and more.

44. But for the legal malpractice of Perkins Coie, Plaintiff's would not have incurred its injuries. As a direct and proximate result of Perkins Coie's unlawful actions, Plaintiff has been damaged in an amount not currently known, but in a sum of not less than \$150,000,000.00.

## **SECOND CAUSE OF ACTION**

### **Fraud**

#### **(Plaintiff against Perkins Coie and Does 1-10)**

45. Plaintiff incorporates by reference Paragraphs 1 through 44, inclusive, as if fully set forth herein.

46. During Perkins Coie's representation of Muzik between 2014 through 2016, Grygiel made a number of material misrepresentations, including:

a. Representing to Muzik on several occasions, and as late as December 21, 2015, that the underlying technology to the interconnected speaker portion of the interconnected headphone system was not vulnerable to prior art attacks, when in fact Grygiel received several USPTO opinions referencing prior art vulnerabilities;

b. Representing to Muzik in at least January, 2016 through June, 2016 that patent applications for the Core Four technologies were filed in 2015, and then

manufacturing false patent application numbers to conceal the fact that no such applications were ever filed.

47. Defendant made these representations with the intent to deceive Muzik into believing that the Muzik IP was protected by pending and viable patent applications, so that it could continue its lucrative representation of Muzik.

48. Plaintiff reasonably relied on Grygiel's representation because he was their trusted attorney hired specifically to obtain patent protection for the Muzik IP.

49. As a result of relying on Grygiel's misrepresentations, Muzik lost its ability to protect the Muzik IP, and as a result, also lost the rights to royalties and/or advantage of being first to market on core technologies contained within the rapidly growing field of connected device controls

50. By reason of Defendant's fraudulent, intentional, and deliberate wrongdoing, the aggravating and outrageous circumstances, and the conscious acts in willful and wanton disregard of Muzik's rights (as described in Paragraphs 1 through 49 herein), in addition to actual compensatory damages, Plaintiff is entitled to recover exemplary and punitive damages in an amount to be proved at trial, but no less than \$150,000,000.00.


### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- a) For compensatory damages against Defendants and Does 1-10, according to proof at trial, but in a sum not less than \$150,000,000.00;
- b) For punitive or exemplary damages against Defendants and Does 1-10 according to proof at trial.
- c) For reasonable attorneys' fees as permitted under any applicable contract or relevant statute, regulation or case law;
- d) For costs of suit incurred herein;
- e) For prejudgment interest accruing at the maximum legal rate; and
- f) For such other and further relief as the Court may deem just and proper.

Dated: January 17, 2020

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