

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

MARK W. KILBOURNE

*Plaintiff,*

v.

APPLE, INC.

*Defendant.*

CASE NO. 4:17cv3283

JURY TRIAL DEMANDED

**ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT**

For its complaint against Defendant, Apple, Inc., Plaintiff Mark W. Kilbourne (“Mr. Kilbourne”) alleges:

**PARTIES**

1. Plaintiff Mark W. Kilbourne (“Mr. Kilbourne” or “Plaintiff”) is an individual resident of the State of Texas with a residence address of 2425 Katy Flewellen Rd., Apt. #211, Katy, TX 77494.

2. Defendant Apple Inc. (“Apple” or “Defendant”) is a California corporation having a number of regular and established physical places of business within the Southern District of Texas including, but not limited to: Apple Houston Galleria, located at 5085 Westheimer Rd., Houston, TX 77056; Apple Highland Village, located at 4012 Westheimer Rd, Houston, TX 77027; Apple Memorial City, located at 303 Memorial City Mall, Houston, TX 77024; and Apple Willowbrook Mall, located at 2000 Willowbrook Dr., Houston, TX 77070.

3. Defendant Apple has sold products and engaged in business and communications in the State of Texas; has a registered agent in the State of Texas; is registered to do business in the

State of Texas, and has been both a plaintiff and a defendant in litigation in the State of Texas. Apple can be served with process by serving its registered agent: CT Corp System, 1999 Bryan St., Ste. 900, Dallas, Texas 75201-3135.

**NATURE OF ACTION, JURISDICTION AND VENUE**

4. This is an action for patent infringement under the Patent Act, 35 U.S.C. § 1 *et seq.*
5. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (Federal Question) and § 1338 (Patent, Trademark and Unfair Competition).
6. Venue is proper under 28 U.S.C. § 1400(b).

**BACKGROUND**

7. Plaintiff Mark Kilbourne is an individual and entrepreneur and the president of Mr. Butler LLC., which offers the Remotizer<sup>®</sup> system for remotely opening and closing a pre-existing deadbolt lock.

8. Over the years, Mr. Kilbourne was exposed to the door lock industry through the work of his father Kent Kilbourne, who has had over thirty-eight years of experience. Through that exposure, Mr. Kilbourne became aware of certain electronic door lock keyless entry systems that, while having some benefits, were not suitable for use in living situations where removal and replacement of an existing deadbolt lock and key was inconvenient, costly and/or not feasible (*e.g.*, because of lease restrictions).

9. To address the issue set forth above, Mr. Kilbourne invented a system for remotely opening and closing a pre-existing deadbolt lock that could be used in locations where replacement of a pre-existing deadbolt lock was not feasible, and that could be easily retrofitted with a wide variety of existing single-cylinder deadbolt lock apparatus.

10. Mr. Kilbourne filed and obtained a United States Patent covering his novel system. Specifically, Mr. Kilbourne is the named inventor and owner of U.S. Patent No. 7,373,795, issued May 20, 2008 (“the ’795 Patent”), which is valid and enforceable. A true and correct copy of Mr. Kilbourne’s ’795 Patent is attached hereto as Exhibit A.

11. Mr. Kilbourne’s company, Mr. Butler LLC, is a Texas-based company operating out of Richmond, Texas. Mr. Butler, LLC has been offering for sale and selling a product embodying the invention of his ’795 Patent. That product is known as the Remotizer<sup>®</sup> system.

12. To ensure that the public is aware that the Remotizer<sup>®</sup> system is patented, Mr. Butler, LLC has consistently and prominently marked the packaging associated with the product with an indication that it is protected by Patent No. 7373795. In addition, Mr. Butler LLC further identified the fact that the Remotizer<sup>®</sup> system is patented on its website ([www.Remotizer.com](http://www.Remotizer.com)) and in its promotional materials, including trade show publications and flyers.

13. Mr. Kilbourne’s Remotizer<sup>®</sup> system has been recognized as a significant innovation and invention. Among other things, Mr. Kilbourne was awarded the first prize at the prestigious 52<sup>nd</sup> Annual Minnesota Inventors Congress (sponsored by the University of Minnesota) for his invention, the Remotizer<sup>®</sup>.

14. Apple is one of the world’s largest companies. It operates and controls the Apple App Store, which reviews and approves software applications suitable for use with Apple hardware products and, upon review, permits such software applications to be offered through the Apple App Store.

15. In late 2014, as part of an effort to promote and sell his patented Remotizer<sup>®</sup> system, Mr. Kilbourne worked to develop a software application that could permit Apple

products, such as the Apple iPhone, to be used as a remote control to open and close deadbolt locks retrofitted with the Remotizer<sup>®</sup> system.

16. Around the September, 2014, time frame, Mr. Butler LLC approached Apple to seek approval to offer the application for its Remotizer<sup>®</sup> system through the Apple App Store.

17. In general, review of software applications for possible offering through the Apple App Store involves submission of printed or electronic materials, including copies of the software at issue. With respect to the efforts to offer the Remotizer<sup>®</sup> system app through the Apple App Store, however, Apple deviated from that process. In around the September, 2014, time frame, Apple responded to the request for approval to offer the Remotizer<sup>®</sup> system app through the Apple App Store with a message indicating that: “We began review of the app but are not able to continue because we need the associated hardware to fully assess your app features.”

18. The request by Apple for the hardware associated with the Remotizer<sup>®</sup> system app was unusual, as receipt and inspection of hardware associated with apps submitted for sale through Apple’s App Store is typically not required.

19. Unbeknownst to Mr. Kilbourne, around the same time that he was submitting his Remotizer<sup>®</sup> system app to Apple and Apple was requesting to be provided with the Remotizer<sup>®</sup> hardware, Apple was working on unveiling the Apple HomeKit. The Apple HomeKit is a framework developed by Apple to permit Apple devices to interact with a variety of home automation products, many of which are to be sold and offered by Apple through Apple’s retail and online sales channels.

20. One of the products offered for use with Apple’s HomeKit is the August Smart Lock.

21. The August Smart Lock is a system for remotely opening and closing a pre-existing deadbolt lock that has been, and is currently, offered for sale by Apple, both through its online stores and through its retail stores, such as its Apple Stores.

22. The August Smart Lock has been sold and offered for sale by Apple through its Apple stores in the Southern District of Texas and is currently being offered for sale and sold by Apple in the Southern District of Texas.

23. Operation of the August Smart Lock, as sold by Apple, infringes upon one or more claims of Mr. Kilbourne's '795 Patent.

## **COUNT I**

### **Infringement of the '795 Patent**

24. The allegations in the preceding paragraphs of this Complaint are hereby restated and incorporated by reference.

25. For purposes of this Count, the term "Accused Products" refers to the August Smart Lock products sold and offered by sale by Defendant.

26. Defendant has committed, and continues to commit, acts of infringement of the '795 Patent at least by selling, and offering to sell, the Accused Products, as described in Exhibit B. Among other things, Defendant is liable for contributory infringement by contributing to the direct infringement of the '795 Patent by purchasers and users of the Accused Products as sold by Apple, as also described in Exhibit B.

27. The '795 Patent is currently in force and has been in force since its issue date.

28. After the issue date of the '795 Patent, Apple has sold and offered to sell the Accused Products within the United States and within the Southern District of Texas and

continues to sell and offer for sale the Accused Products in the United States and within the Southern District of Texas.

29. The Accused Products, as sold by Apple, are intended for use in a method of moving a deadbolt lock by remotely extending and retracting a pre-existing deadbolt lock and have no other substantial purposes.

30. The intended use of the Accused Products, as sold by Apple, results in direct infringement of at least one claim of the '795 Patent as reflected by the charts attached as Exhibit B to this complaint.

31. Given that operation of the Accused Products as intended and sold by Apple directly infringes at least one claim of the '795 Patent, the Accused Products constitute a material part of the invention of the '795 Patent.

32. At least as early as the filing date of this complaint, and—on information and belief based on Apple's prior request for the Remotizer<sup>®</sup> system hardware—prior to that date, Apple is (and was) aware of the '795 Patent and that the Accused Products that it is offering and selling have no substantial uses other than to infringe the '795 Patent.

33. At all relevant times, Plaintiff has complied with any applicable obligations required by 35 U.S.C. § 287.

34. Any infringement of the '795 Patent by Defendant after obtaining knowledge of the '735 Patent is willful.

35. Defendant has been damaged as a result of Defendant's infringing conduct with respect to the '795 Patent. Defendant is, thus, liable to Plaintiff in an amount that adequately compensates it for such infringement, which, by law, cannot be less than a reasonable royalty,

together with interest and costs, including lost profits, as affixed by this Court under 35 U.S.C. § 284.

**PRAYER**

**WHEREFORE**, Mr. Kilbourne requests judgment against Defendant as follows:

1. An award of damages, increased as deemed appropriate by the court, under 35 U.S.C. § 284;
2. An award of attorneys' fees under 35 U.S.C. § 285;
3. An award of prejudgment interest and costs of the action;
4. An injunction preventing continuing infringement; and
5. Such other and further relief as the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury on all issues so triable.

October 30, 2017

Respectfully submitted,

/s/Robert J. McAughan

Robert J. McAughan, Jr.

Attorney-in-Charge

Texas Bar No. 00786096

S.D. Tex. No. 16501

bmcaughan@smd-iplaw.com

Jeffrey A. Andrews

Texas Bar No. 24050227

S.D. Tex. No. 608251

jandrews@smd-iplaw.com

David L. Terrell

Texas Bar No. 24063030

S.D. Tex. No. 986024

dterrell@smd-iplaw.com

SUTTON MCAUGHAN DEEVER PLLC

Three Riverway, Suite 900

Houston, TX 77056

(713) 800-5700 (T)

(713) 800-5699 (F)

*Attorneys for Plaintiff*