

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

REMBRANDT SOCIAL MEDIA, LP

Plaintiff,

v.

FACEBOOK, INC. and
ADDTHIS, INC.

Defendants.

Civil Action No. 1:13cv158 TSE/TRJ

JURY TRIAL DEMANDED

SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, for its second amended complaint,¹ alleges as follows:

The Parties

1. Plaintiff Rembrandt Social Media, LP (“Rembrandt”) is a Virginia limited partnership having its principal place of business at 401 City Avenue, Suite 900, Bala Cynwyd, Pennsylvania 19004.

2. Defendant Facebook, Inc. (“Facebook”) is a Delaware corporation with its headquarters at 1601 Willow Road, Menlo Park, California 94025.

3. Defendant AddThis, Inc. (“AddThis”) is a Delaware corporation with its headquarters and principal place of business in this district at 1595 Spring Hill Road, Suite 300, Vienna, Virginia 22182.

Jurisdiction, Venue, and Joinder

4. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction

¹ This Second Amended Complaint is being filed after the Court’s Order *granting in part and denying in part* Defendants’ Motion to Dismiss. (D.I. 141) For ease of reference, a redlined version of the First Amended Complaint is attached hereto as **Exhibit A**.

over this action under 28 U. S. C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over Facebook and AddThis (collectively “Defendants”) because, among other things, the Defendants have committed acts of infringement in Virginia, including in this district, and have engaged in continuous and systematic activities in Virginia.

6. Venue is proper in this Court under 28 U.S.C. §§ 1391 and 1400(b) because, among other things, Defendants have committed acts of infringement in this judicial district, and are subject to personal jurisdiction here.

7. Joinder is proper under 35 U.S.C. § 299 because, as explained in Count II, Facebook and AddThis are jointly and severally liable for infringement arising out of the same series of transactions or occurrences relating to the use of the same system, and questions of fact common to both defendants will arise in the action.

Facts

8. Joannes Jozef Everardus Van Der Meer, now deceased, was a computer scientist, a computer programmer, and an inventor. During the 1990s, at a time when the World Wide Web was in its infancy, Van Der Meer was a pioneer in the development of user-friendly Web-based technologies.

9. On September 1, 1998, Van Der Meer filed two related patent applications with the United States Patent and Trademark Office (“USPTO”). The first of these applications, entitled “METHOD AND APPARATUS FOR IMPLEMENTING A WEB PAGE DIARY,” issued on July 2, 2002 as U.S. Patent No. 6,415,316 (“the ’316 patent”). The ’316 patent described and claimed a novel technology that gave ordinary people—those without training in the computer arts—the ability to create and use what Van Der Meer called a personal diary, and

what today would be called “social media,” on the World Wide Web. Using his system, ordinary people could collect personal information and third-party content, organize the information chronologically on a personalized web page, and share the information with a selected group of people, such as the end user’s friends, through the use of user-settable privacy levels.

10. Van Der Meer’s second application, entitled “SYSTEM AND METHOD FOR GENERATION, TRANSFERRING, AND USING AN ANNOTATED UNIVERSAL ADDRESS,” was issued by the USPTO on September 11, 2001 as United States Patent No. 6,289,362 (“the ’362 patent”). It described and claimed a related set of technologies that enabled the automatic transfer, at a user’s request, of third-party content from a content-provider’s website to the user’s personal diary page. These techniques further increased the utility of Van Der Meer’s “personal diary” concept, by allowing users to collect interesting content as they browsed the Web, simply by clicking on buttons on the websites that they visited.

11. While these applications were pending and after they issued as patents, Van Der Meer worked to commercialize his inventions. He formed a company called Administrator Nederland B.V. (which later did business as, and hereinafter will be referred to as, “Aduna”) and began work on implementing the ideas contained in his patents. He registered a domain name—www.surfbook.com—and separately launched a pilot system that utilized some of the innovations described in his patents. Unfortunately, Van Der Meer passed away in June of 2004, before he was able to fully realize his vision.

12. After his death, Van Der Meer’s family, including his widow, sought a way to achieve the credit and compensation that his inventions—and his pioneering work in the field of

social media—deserved. To help achieve this goal, the family enlisted the help of Rembrandt IP Management, LLC, which is an affiliated company to, and acts as an agent for, the plaintiff in this action. Rembrandt IP Management, LLC, works to help inventors and patent owners, who often do not have the requisite capital or expertise, enforce their rights against companies that use their inventions without paying for them. The family and Rembrandt are now working together to enforce the '316 and '362 patents.

13. Rembrandt is the owner by assignment of both the '316 patent and the '362 patent, copies of which are attached to this First Amended Complaint as Exhibit A and Exhibit B, respectively.

14. On or before September 2008, the law firm that had represented Aduna in connection with the '316 and '362 patents, and had prosecuted the applications for those patents, took over the prosecution of a Facebook patent application and has since continued to represent Facebook in patent matters.

15. On or about May 20, 2011, Facebook was served with a complaint alleging infringement of U.S. Patent No. 7,933,893 (the '893 patent), which cites the '362 patent as prior art on its face. That lawsuit was filed in the District of Delaware, case number 11cv435.

16. On or about June 2012, Facebook acquired (1) U.S. Patent No. 7,907,966 (the '966 patent), on the face of which the '362 patent is listed as prior art, and (2) U.S. Patent No. 8,327,275 (the '275 patent), during the prosecution of which an IDS was filed listing published Van Der Meer European patent application EP 0984370A2, which claimed priority to the patent applications that issued as the '316 and '362 patents.

17. In or about July 2012, the law firm that had been representing Aduna and Facebook for an overlapping period of almost four years terminated its relationship with Aduna.

18. Today, Facebook owns and operates the famous and widely used social networking service accessible for example on the World Wide Web at the web address of www.facebook.com and through specialized mobile applications (the “Facebook social network”). Although Mark Zuckerberg did not start what became Facebook until 2003, it bears a remarkable resemblance, both in terms of its functionality and technical implementation, to the personal web page diary that Van Der Meer had invented years earlier.

19. Like the Van Der Meer inventions, the Facebook social network gives ordinary people—those without special training—the ability to create a personal webpage diary, comprised of personal information and third-party content, and to arrange it chronologically. Facebook organizes (or has organized) this information in various presentation formats, including the “wall,” the “timeline,” and the “news feed,” and provides the user with the ability to share specific diary entries with a selected group of people, such as the user’s friends, through the use of user-settable privacy levels.

20. Like the Van Der Meer inventions, the Facebook social network allows Facebook members to customize their individual diary pages using a “cover.” The Van Der Meer patents and Facebook both refer their customization features as “covers” in a non-standard way, to refer to something that does not actually cover anything else up.

21. In addition, Facebook uses its network to obtain advertising revenue by placing advertisements on millions of personal diary pages. This advertising feature was envisioned by Van Der Meer, and was described and claimed in the ’316 patent.

22. Moreover, and again like the Van Der Meer inventions, Facebook provides users with the ability to automatically transfer content from third party web sites to their Facebook diaries, simply by clicking a “share” or “like” button on one of those sites.

23. When a Facebook member visiting a particular web page presses a “like” or “share” button, a Facebook-provided program (hereinafter the “Facebook Transfer Applet”) temporarily commandeers the member’s web browser, and instructs it to perform all of the underlying technical steps required to transfer information about the page over the internet to databases on Facebook’s server. In addition to transferring the information that the user sees, the program code also causes the browser to collect and transmit to Facebook’s server other information, such as information about the identity of the user, which allows Facebook to track the behavior and preferences of its users.

24. Facebook encourages the use of its “share” and “like” buttons on third party web sites by distributing program code (hereinafter “the Facebook Transfer Script”) that allows web site operators to implement these features on their sites. The Facebook Transfer Script contains instructions that load the Facebook Transfer Applet into the web browser.

25. Social bookmarking services provide software tools, also known as “widgets,” that allow members of social networks to collect or “bookmark” information about web sites that they are viewing to social networking sites, such as Facebook, and thus allow users to make a record, or diary, about the web sites they have visited. Defendant AddThis is the largest and most widely used social bookmarking service and was an early partner with Facebook. AddThis makes money by using its widgets to gather insights on what large numbers of Internet users read and share with their friends in real time, and selling that data to companies which can benefit from those insights.

26. In one particular example, AddThis provides a widget that is specially configured only to bookmark information to Facebook (“the AddThis Facebook widget”). Website operators may include a reference to the AddThis Facebook widget on their web sites, in lieu of

using the Facebook Transfer Script. When a website is loaded into a viewer's web browser, a signal is sent to the AddThis web server, which causes AddThis to download the AddThis Facebook widget into the viewer's web browser, which causes it to be executed. When this widget is executed, it causes the Facebook Transfer Applet to also be loaded into the web browser, and to present to the user the familiar "like" and "share" buttons described above. Facebook and AddThis work together to enable the AddThis Facebook widget, including by ensuring that it is interoperable with Facebook's web servers. Facebook and AddThis thus disseminate and enhance the functionality of the Facebook's "like" and "share" buttons on third party websites. In 2007, Facebook provided AddThis with special access to its developer platform to assist and encourage AddThis to develop the AddThis Facebook widget. The CEO of AddThis, Mr. Ramsey McGrory, has said: "We have a long and positive relationship with Facebook. We were an early partner for them as they were growing to scale. We continue to be on the tool side, on the sharing and tool side."

27. The AddThis web widget acts like an enhanced version of the Facebook Transfer Script, and is used by third party web site operators in lieu of the transfer script provided by Facebook. Like the Facebook Transfer Script, however, the AddThis web widget relies upon, and cooperates with, the Facebook Transfer Applet, provided by Facebook, to effectuate transfer of content from a given website to Facebook.

COUNT I

(Facebook's Infringement of the '316 patent)

28. Rembrandt incorporates paragraphs 1-27 by reference.

Direct Infringement

29. Facebook has directly infringed and continues to directly infringe the '316 patent in this judicial district and elsewhere in the United States. Facebook's infringement includes,

without limitation: (1) making and using the apparatus of claims 17 and claims dependent thereon, the computer-code products of claim 28 and claims dependent thereon, and the system of claim 39, and (2) practicing the method of claims 1 and 6 and claims dependent thereon.

30. Specifically, Facebook's direct infringement includes among other things making and placing into service, and otherwise using, a system by which Facebook displays interactive Facebook diary pages to Facebook members. This system includes at least computer software (hereinafter "the Facebook page display system") that performs the following activities:

- Sending program code, including code known to Facebook as "BigPipe," from the Facebook servers to an end user's computer browser;
- Sending content to the end user's browser, including the "pagelets" that are used by the BigPipe program;
- Sending a page design template and privacy level information to the end user's browser;
- Assembling the page for display to the end user;
- Allowing the end user to request changes in content information on the page; and
- Sending updated content information to the user in accordance with the user's request.

31. At least as a result of the computer software and hardware that performs these activities, Facebook is liable for literal direct infringement of the '316 patent pursuant to 35 U.S.C. § 271(a).

32. To the extent that any fact finder deems any of the elements of the '316 patent claims not literally satisfied by the structure or use of the Facebook social network, these elements are satisfied under the doctrine of equivalents.

33. Rembrandt has no statutory obligation to mark any products with the number of the '316 patent. Rembrandt has notified Facebook of the infringement of the '316 patent by

filing the present action for patent infringement, as permitted by 35 U.S.C. § 287(a).

Indirect Infringement

34. Alternatively and in addition to its liability for direct infringement of the '316 patent, Facebook is also liable for indirectly infringing the '316 patent in this judicial district and elsewhere in the United States by inducing direct infringement in violation of 35 U.S.C. § 271(b) and contributing to direct infringement in violation of 35 U.S.C. § 271(c).

35. Facebook has been aware of the '316 patent since at the least February 6, 2013, when it was served with the original Complaint in this action.

36. Upon information and belief, upon Facebook's gaining knowledge of the '316 patent, it was, or became, apparent to Facebook that the operation of its social network resulted in infringement of the '316 patent. Upon information and belief, Facebook has continued to engage in the aforementioned activities constituting inducement of infringement, notwithstanding its knowledge (or willful blindness thereto) that the activities it was inducing would result in infringement of the '316 patent.

37. The direct infringement induced and contributed to by Facebook includes at least the use of the Facebook social network by end users acting alone or, in the case of method claims, in combination with Facebook. The directly infringing use includes use of the Facebook page display system.

38. Facebook encourages direct infringement of the '316 patent by at least widely publicizing its social network and by providing on its website tools and instructions for conducting the directly infringing use.

39. With respect to apparatus claim 17, computer code product claim 28, and system claim 39, and their dependent claims, Facebook induces infringement by at least encouraging,

facilitating and instructing users to use the inventions while they are visiting the Facebook social network. Facebook does this by, without limitation, modifying, in response to user actions, the configuration of user computers and by encouraging users to use their computers, so modified, to interact with the Facebook social network, thereby inducing use of the claimed inventions.

40. With respect to method claims 1 and 6 and their dependent claims, Facebook induces infringement by at least encouraging and instructing users who visit the Facebook social network to perform some or all of the claimed method steps, while in certain instances performing certain of the method steps itself in coordination with such performance by users.

41. Facebook's specific intent to cause its users to directly infringe can also be inferred from its knowledge of the '316 patent and from the striking similarity between the '316 patent and the Facebook social network. Both the '316 patent and the Facebook social network feature sending from a server to a user's browser both content and program code for creating a personal diary page, controlling access to the page in accordance with a privacy level set by the user, and updating the page as requested by the user.

42. Facebook contributes to the direct infringement by at least providing its users with software components for operating its social network and interacting with end user browsers, including the software components comprising at least portions of the Facebook page display system. These software components are known by Facebook to be especially made or adapted for use in the infringing Facebook system. These components are not staple articles of commerce and have no substantial non-infringing use. They are specially designed to work only with the Facebook social network, and their only purpose is to interact with other elements of the Facebook page display system that implements the Facebook member experience which, as

described above, directly infringes the claims of the '316 patent.

271(f) Infringement

43. Facebook is liable for infringement under 35 U.S.C. § 271(f) when the end users are outside the United States by supplying its software components for combination in browsers located outside the United States.

Remedy for Facebook's Infringement

44. For past infringement, Rembrandt has been damaged as a result of Facebook's conduct described in this Count. Facebook is therefore liable to Rembrandt under 35 U.S.C. § 284 for past damages in an amount that adequately compensates Rembrandt for Facebook's infringing conduct but no less than a reasonable royalty, together with interest and costs as fixed by this Court.

45. For future infringement, Rembrandt will be irreparably harmed unless this Court issues a permanent injunction prohibiting Facebook, its agents, servants, employees, representatives, and all others acting in active concert with Facebook, from infringing the '316 patent. Alternatively, Rembrandt is entitled to damages in lieu of an injunction, in an amount consistent with the fact that for future infringement Facebook will be an adjudicated infringer of a valid patent.

COUNT II

(Infringement of the '362 patent by Facebook and AddThis
based on the same transactions and occurrences)

46. Rembrandt incorporates paragraphs 1-27 by reference.

Direct Infringement

47. Based on the same transactions and occurrences, Facebook and AddThis have both directly infringed and continue to directly infringe the '362 patent in this judicial district and elsewhere in the United States.

48. AddThis directly infringes at least claim 7 of the '362 patent by making a distributed computer system (hereinafter the "Facebook-AddThis Transfer System") that facilitates the transfer, from third party web sites to Facebook's servers, of content that a Facebook member has indicated is "liked" or to be "shared." Facebook and AddThis also directly infringe at least claim 7 of the '362 patent by their placing into service and otherwise using the entire Facebook-AddThis Transfer System. Upon information and belief, the Facebook-AddThis Transfer System includes at least the following hardware and software elements:

- AddThis memory that stores the AddThis-Facebook widget that, when executed, requests the Facebook Transfer Applet that transfers data that has been "liked" or "shared" by a Facebook member from the member's browser to a Facebook server, where it is stored in a Facebook database;
- Facebook memory for storing a database containing liked or shared content with associated links and the Facebook Transfer Applet;
- A browser on the Facebook member's computer that is coupled to both the AddThis memory and the Facebook memory and which executes the AddThis-Facebook widget and the Facebook Transfer Applet in order to transfer annotated data that has been "liked" or "shared" by a Facebook member from the member's browser to a Facebook server, where it is stored in a Facebook database.

49. AddThis makes the Facebook-AddThis Transfer System by at least downloading the AddThis-Facebook widget, including a transfer script, into a client web browser, and by controlling the client web browser to download the Facebook Transfer Applet into the client

web browser, thereby configuring the client web browser as required by at least claim 7. Because AddThis makes the entire Facebook-AddThis Transfer System, at least as described above, it is liable for literal direct infringement of the '362 patent pursuant to 35 U.S.C. § 271(a).

50. Facebook places into service and otherwise uses the Facebook-AddThis Transfer System by controlling the entire system to transfer member-specified content, along with tracking information about Facebook member preferences and web browsing patterns, to Facebook's servers. Facebook uses this collected information to provide content for at least the Facebook social network, and to generate targeted advertising to Facebook members. AddThis places into service and otherwise uses the entire Facebook-AddThis Transfer System by controlling the entire system to collect tracking information about user activities on the web sites of AddThis's website operator customers. AddThis uses this collected information to generate web-analytics reports for its customers.

51. Because both Facebook and AddThis use the entire Facebook-AddThis Transfer System, at least as described above, they are liable for literal direct infringement of the '362 patent pursuant to 35 U.S.C. § 271(a).

52. To the extent that any fact finder deems any of the elements of the '362 patent claims not literally satisfied by the above recited hardware and software components, these elements are nevertheless satisfied under the doctrine of equivalents.

53. Rembrandt has no statutory obligation to mark any products with the number of the '362 patent. Rembrandt has notified Facebook and AddThis of the infringement of the '362 patent by filing the present action for patent infringement, as permitted by pursuant to 35 U.S.C. Section 287(a).

Indirect Infringement

54. Alternatively and in addition to their liability for direct infringement, and based on the same transactions and occurrences, Facebook and AddThis are also both liable for indirectly infringing the '362 patent in this judicial district and elsewhere in the United States by inducing direct infringement in violation of 35 U.S.C. § 271(b) and by contributing to direct infringement in violation of 35 U.S.C. § 271(c).

55. Facebook's and AddThis's indirect infringement includes inducing and contributing to the making and use of the Facebook-AddThis Transfer System, by Facebook members, AddThis customers, and others.

56. Facebook and AddThis induce the use of the Facebook-AddThis Transfer System by at least providing components of the Facebook-AddThis Transfer System, by advertising the availability of these components, and by instructing Facebook members and AddThis customers how to use those components to use the Facebook-AddThis Transfer System. Facebook and AddThis also induce the use of the Facebook-AddThis Transfer System by at least operating one or more web servers that interoperate with the Facebook-AddThis Transfer System, thereby allowing it to perform its intended function.

57. Facebook encourages AddThis to make and use the Facebook-AddThis Transfer System by at least making its system interoperable with the AddThis Facebook widget, by permitting and encouraging AddThis to use the Facebook Transfer Applet and "like" button icons, and by providing instruction for their use. Indeed, Facebook aggressively encourages use of its applet by providing instructions on its website to cause its icon to appear on millions of webpages around the world, both directly and through AddThis.

58. Facebook and AddThis have been aware of the '362 patent since at least

February 6, 2013, when they were served with the original Complaint in this action.

59. Upon information and belief, upon gaining knowledge of the '362 patent, it was, or became, apparent to Facebook and AddThis that the making and use of the Facebook-AddThis Transfer System resulted in infringement of the '362 patent. Upon information and belief, Facebook continued to engage in activities that induced the making and use of the Facebook-AddThis Transfer System notwithstanding their knowledge (or willful blindness thereto) that the activities they were inducing would result in infringement of the '362 patent.

60. Facebook's and AddThis's specific intent to cause direct infringements of the '362 patent through making and/or use of the Facebook-AddThis Transfer System can be inferred from their knowledge of the '362 patent and from the striking similarity between that system and the '362 patent. Both the '362 patent and the Facebook-AddThis Transfer System feature a convenient and automatic way of installing website content to a Facebook member's diary page, by storing and providing on request a transfer applet for carrying out the installation.

61. Facebook's specific intent to cause AddThis to directly infringe by using the Facebook-AddThis Transfer System can be inferred from its knowledge of the '362 patent and from the striking similarity between the system and the '362 patent. Both the '362 patent and the Facebook-AddThis Transfer System feature a convenient and automatic way of installing website content to an end user's diary page, by storing and providing on request a transfer applet for carrying out the installation.

62. Facebook and AddThis also contribute to the direct infringement of end users by at least providing software components of the Facebook-AddThis Transfer System, knowing that that system infringes at least claim 7 of the '362 patent. These software components are known by Facebook and AddThis to be especially made or adapted for use in the infringing

system. And these components are not staple articles of commerce and have no substantial non-infringing use as they are necessarily required to interact with the infringing system as whole to perform their very specific functions. They are specially designed to work only with the Facebook-AddThis Transfer System, or a similarly structured system, and their only purpose is to interact with other elements of the Facebook-AddThis Transfer System, or a similarly structured system, which, as described above, directly infringes at least claim 7 of the '362 patent.

63. Facebook contributes to AddThis's direct infringement by providing portions of the software components of the Facebook-AddThis Transfer System, knowing that that system infringes at least claim 7 of the '362 patent. These software components are known by Facebook to be especially made or adapted for use in the infringing system. And these components are not staple articles of commerce and have no substantial non-infringing use as they are necessarily required to interact with the infringing system as whole to perform their very specific functions. They are specially designed to work only with the Facebook-AddThis Transfer System, or a similarly structured system, and their only purpose is to interact with other elements of the Facebook-AddThis Transfer System, or a similarly structured system, which, as described above, directly infringes at least claim 7 of the '362 patent.

Joint Infringement

64. Alternatively, the actions alleged above establish joint infringement of at least claim 7 by Facebook and AddThis for which they should be found to be jointly and severally liable.

271(f) Infringement

65. Facebook and AddThis are liable for infringement under 35 U.S.C. § 271(f)

when the end users are outside the United States by supplying their respective software components for combination in browsers located outside the United States.

Remedy for Defendants' Infringement

66. For past infringement, Rembrandt has been damaged as a result of Defendants' infringement of the '362 patent by the conduct described in this Count. The Defendants are therefore jointly and severally liable to Rembrandt for past damages under 35 U.S.C. § 284 in an amount that adequately compensates Rembrandt for their infringing conduct but no less than a reasonable royalty, together with interest and costs as fixed by this Court.

67. For future infringement, Rembrandt will be irreparably harmed unless this Court issues a permanent injunction prohibiting the Defendants, their respective agents, servants, employees, representatives, and all others acting in active concert with Defendants from infringing the '362 patent. Alternatively, Rembrandt is entitled to damages in lieu of an injunction, in an amount consistent with the fact that for future infringement the Defendants will be adjudicated infringers of a valid patent.

COUNT III

(Facebook's separate infringement of the '362 patent)

68. Rembrandt incorporates paragraphs 1-27 by reference.

Direct Infringement

69. Facebook has directly infringed and continues to directly infringe the '362 patent in this judicial district and elsewhere in the United States.

70. Facebook directly infringes at least claim 7 of the '362 patent by, without limitation, its use of a distributed computer system (hereinafter the "Facebook Transfer System") that transfers, from third party web sites to Facebook's servers, content that a

Facebook member has indicated is “liked” or to be “shared.” Upon information and belief, this Facebook Transfer System includes at least the following hardware and software elements:

- Third-party content-provider webserver memory that stores the Facebook Transfer Script provided by Facebook that, when executed, requests the Facebook Transfer Applet that transfers data that has been “liked” or “shared” by a Facebook member from the member’s Internet browser to a Facebook server, where it is stored in a Facebook database;
- Facebook memory for storing a database containing liked or shared content with associated links and the above-mentioned transfer applet;
- An Internet browser on the Facebook member’s computer that is coupled to both the third-party content-provider webserver memory and the Facebook memory and which executes the Facebook Transfer Script and the Facebook Transfer Applet in order to transfer annotated data that has been “liked” or “shared” by a Facebook member from the member’s Internet browser to a Facebook server, where it is stored in a Facebook database.

71. Facebook places into service and otherwise uses the Facebook Transfer System by controlling the entire system to transfer member-specified content, along with user tracking information about Facebook member preferences and web browsing patterns, to Facebook's servers. Facebook uses this collected information to provide content for the Facebook social network, and to generate targeted advertising to Facebook members.

72. Because Facebook uses the entire Facebook Transfer System, at least as described above, Facebook is liable for literal direct infringement of the '362 patent pursuant to 35 U.S.C. § 271(a).

73. To the extent that any fact finder deems any of the elements of the '362 patent claims not literally satisfied by the above recited hardware and software components, these element are satisfied under the doctrine of equivalents.

74. Rembrandt has no statutory obligation to mark any products with the number of the '362 patent. Rembrandt has notified Facebook of the infringement of the '362 patent by

filing the present action for patent infringement, as permitted by pursuant to 35 U.S.C. Section 287(a).

Indirect Infringement

75. Alternatively and in addition to its liability for directly infringing the '362 patent, Facebook is liable for indirectly infringing the '362 patent in this judicial district and elsewhere in the United States by inducing direct infringement in violation of 35 U.S.C. § 271(b) and contributing to direct infringement in violation of 35 U.S.C. § 271(c).

76. Facebook's indirect infringement includes inducing and contributing to the making and use of the Facebook Transfer System by Facebook members, website operators, and others.

77. Facebook induces the making and use of the Facebook Transfer System by providing components of the Facebook Transfer System, by advertising the availability of these components, and by instructing Facebook members and website operators how to use those components to make and use the Facebook Transfer System. Facebook also induces the making and use of the Facebook Transfer System by operating one or more web servers that interoperate with the Facebook Transfer System, thereby allowing it to perform its intended function.

78. Facebook has been aware of the '362 patent since February 6, 2013, when it was served with the original Complaint in this action.

79. Upon information and belief, upon gaining knowledge of the '362 patent, it was, or became, apparent to Facebook that the making and use of the Facebook Transfer System resulted in infringement of the '362 patent. Upon information and belief, Facebook continued to engage in activities that induced the making and use of the Facebook Transfer System notwithstanding its knowledge (or willful blindness thereto) that the activities it was inducing

would result in infringement of the '362 patent.

80. Facebook's specific intent to cause direct infringements of the '362 patent through making and use by others of the Facebook Transfer System can be inferred from its knowledge of the '362 patent and from the striking similarity between the system and the '362 patent. Both the '362 patent and the Facebook Transfer System feature a convenient and automatic way of installing website content to a Facebook member's diary page, by storing and providing on request a transfer applet for carrying out the installation.

81. Facebook also contributes to the direct infringement by end users and by third-party website owners by providing software components of the Facebook Transfer System, knowing that that system infringes at least claim 7 of the '362 patent. These software components are known by Facebook to be especially made or adapted for use in the infringing system. And these components are not staple articles of commerce and have no substantial non-infringing use as they are necessarily required to interact with the infringing system as whole to perform their very specific functions. They are specially designed to work only with the Facebook Transfer System, or a similarly structured system, and their only purpose is to interact with other elements of the Facebook Transfer System, or a similarly structured system, which, as described above, directly infringes at least claim 7 of the '362 patent.

271(f) Infringement

82. Facebook is liable for infringement under 35 U.S.C. § 271(f) when either the end users or the third-party website server is outside the United States by supplying its software components for combination outside the United States.

Remedy for Facebook's Infringement

83. For past infringement, Rembrandt has been damaged as a result of Facebook's

infringement of the '362 patent by the conduct described in this Count. Facebook is therefore liable to Rembrandt for past damages under 35 U.S.C. § 284 in an amount that adequately compensates Rembrandt for Facebook's infringing conduct but no less than a reasonable royalty, together with interest and costs as fixed by this Court.

84. For future infringement, Rembrandt will be irreparably harmed unless this Court issues a permanent injunction prohibiting Facebook, its respective agents, servants, employees, representatives, and all others acting in active concert with Facebook from infringing the '362 patent. Alternatively, Rembrandt is entitled to damages in lieu of an injunction, in an amount consistent with the fact that for future infringement the Facebook will be an adjudicated infringer of a valid patent.

JURY DEMAND

85. Rembrandt hereby respectfully demands a jury trial on all issues appropriately triable by a jury.

PRAYER FOR RELIEF

WHEREFORE, Rembrandt prays that it have judgment against Defendants entered as follows:

- (1) A decree that Facebook has infringed the '316 and '362 patents, and that such infringement was willful;
- (2) A decree that AddThis and Facebook have jointly infringed the '362 patent, and that Facebook's infringement was willful;
- (3) A decree addressing future infringement that either (i) awards a permanent injunction enjoining Defendants and their agents, servants, employees, affiliates, divisions, and subsidiaries, and those in association with Defendants, from infringing the '316 and

- '362 patents or (ii) awards damages for future infringement in lieu of an injunction, in an amount consistent with the fact that for future infringement the Defendants will be adjudicated infringers of valid patent, and trebles that amount in view of the fact that the future infringement will be willful as a matter of law.
- (4) An award of increased damages pursuant to 35 U.S.C. § 284;
 - (5) A decree that this case is exceptional under 35 U.S.C. § 285;
 - (6) An award of all costs of this action, including attorneys' fees and interest; and
 - (7) Such further relief, at law or in equity, to which Rembrandt is entitled.

Dated: June 19, 2013

Respectfully submitted,

FISH & RICHARDSON P.C.

By: /s/ Ahmed J. Davis

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CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of June, 2013, I will electronically file the foregoing **SECOND AMENDED COMPLAINT** with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing to the following:

<p>Phillip E. Morton Stephen R. Smith Jonathan G. Graves Cooley LLP Reston Town Center 11951 Freedom Drive Reston, VA 20190 Telephone: 703-456-8000 Facsimile: 703-456-8100</p> <p>John S. Kyle Michael G. Rhodes Cooley LLP 4401 Eastgate Mall San Diego, CA 92121 Telephone: 858-550-6000 Facsimile: 858-550-6420</p> <p>Mark R. Weinstein Heidi Lyn Keefe Cooley LLP 5 Palo Alto Square 3000 El Camino Real Palo Alto, CA 94304 Telephone: 650-843-5000 Facsimile: 650-849-7400</p> <p><i>Counsel for Defendant Facebook, Inc.</i></p>	<p>Christopher C. Campbell Stephen P. McBride Cooley LLP Reston Town Center 11951 Freedom Drive Reston, VA 20190 Telephone: 703-456-8000 Facsimile: 703-456-8100</p> <p><i>Counsel for Defendant AddThis, Inc.</i></p>
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/s/ Ahmed J. Davis

Ahmed J. Davis