FILED

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2013 SEP 12 AM 10: 11

CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY_____

Attorney for Plaintiff
EveryMD.com LLC

IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

EVERYMD.COM LLC, a
California Limited Liability
Company,

                Plaintiff,

      v.

TWITTER, INC., a Delaware
Corporation,

                Defendant.

Civil Action No. **CV 13-06680-JEM**

COMPLAINT FOR PATENT INFRINGEMENT

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff EVERYMD.COM LLC ("Plaintiff" or "EveryMD"), and on information and belief alleges as follows:

JURISDICTION AND VENUE

1.   This is an action for patent infringement under 35 U.S.C. §§ 271 et. seq. and 28 U.S.C. §§ 1331 and 1338(a).

2.   The acts of patent infringement alleged herein occurred within this judicial district, Plaintiff resides in this district, and Defendant TWITTER, INC.

("Defendant" or "Twitter") is subject to personal jurisdiction in this district. Therefore, venue is proper pursuant to 28 U.S.C. §§ 1391(b), (c), and 1400(b).

PARTIES

3.   Plaintiff is a California Limited Liability Company with a place of business at 2032 Whitley Ave., Los Angeles, CA 90068.

4.   Defendant is a Delaware Corporation with a place of business at 1355 Market Street, Suite 900 San Francisco, CA 94103.

FIRST CAUSE OF ACTION
PATENT INFRINGEMENT

5.   Plaintiff incorporates by reference paragraphs 1 – 4 as though fully set forth herein.

6.   Plaintiff owns the website www.everymd.com.

7.   Plaintiff's website at www.everymd.com has since the year 2000 provided email messaging services allowing patients to communicate with over 300,000 doctors.

8.   Plaintiff's principals Frank Weyer and Troy Javaher (collectively, "the EveryMD inventors") invented numerous novel technologies and inventions during development of the www.everymd.com website.

9.   On November 23, 1999, the EveryMD inventors filed U.S. Patent Application Serial No. 09/447,755 entitled "Method Apparatus and Business System for Online Communications with Online and Offline Recipients" disclosing the inventions made by the EveryMD inventors while developing the www.everymd.com website.

10.   To date, four separate patents covering four separate inventions have issued from the patent application originally filed in November 1999. Those patents

are U.S. Patent Nos. 6,671,714 (issued December 30, 2003), 7,644,122 (issued January 5, 2010), 8,499,047 (issued July 30, 2013), and 8,504,631 (issued August 6, 2013).

11.   Plaintiff is the assignee of record of U.S. Patent 8,504,631 entitled "Method, Apparatus and Business System for Online Communications with Online and Offline Recipients" ("the '631 patent").

12.   The '631 patent is valid and in full force and effect.

13.   The '631 patent is directed to a novel method for providing notification of online messages to a telephone number of a recipient.

14.   Defendant directly infringes the '631 patent by practicing the claimed invention of the '631 patent without authorization of Plaintiff.

15.   A first example of how Defendant directly infringes claim 1 of the '631 patent is set forth in paragraphs 16 to 25 below.
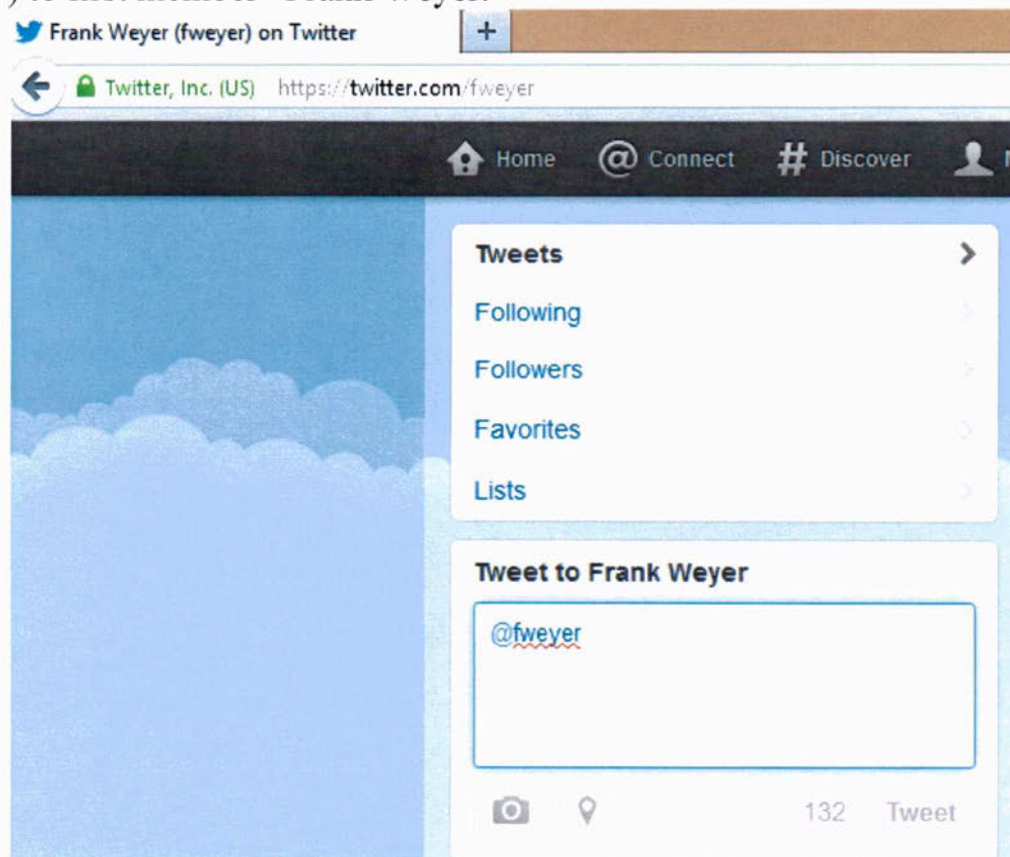
16.   The preamble of claim 1 of the '631 patent states:

"1. A method for providing for communications by a server computer system among a first member of a group of members for whom said server computer system has created a first server created email box and a second member of said group of members for whom said server computer system has created a second server created email box, said method comprising the steps of:"

17.   Twitter provides communications between Twitter members. For each Twitter member, Twitter's server computer system creates an email box, typically having the format "@*name*". Examples of email boxes created by Twitter's server computer system are "@fweyer" (first server created mailbox for first member "Frank Weyer") and "@everymd" (second server created mailbox for second member "Every MD").

Complaint

18.   The limitation of claim 1 that follows the preamble of claim 1 of the '631 patent states:

"*said server computer system transmitting a first server created web page to a first internet access device of said second member, said first server created web page comprising a message interface for receiving by said server computer system input data comprising a first message to said first member;*".

19.   Twitter's server computer system transmits various server created web pages to an internet access device of a member (i.e. a "second member") that provide message interfaces for receiving data comprising messages to another member (i.e. the "first member"). The screen capture below shows an example of such a "first server created web page" that includes a first type of such a "message interface." In the screen capture below, the web page including the message interface has been provided to the second member "Every MD" for receiving data comprising a first message ("Tweet") to first member "Frank Weyer."

Complaint

20. The next limitation of claim 1 of the '631 patent states:

"*said server computer system receiving first input data entered into said message interface from said first internet access device of said second member;*"
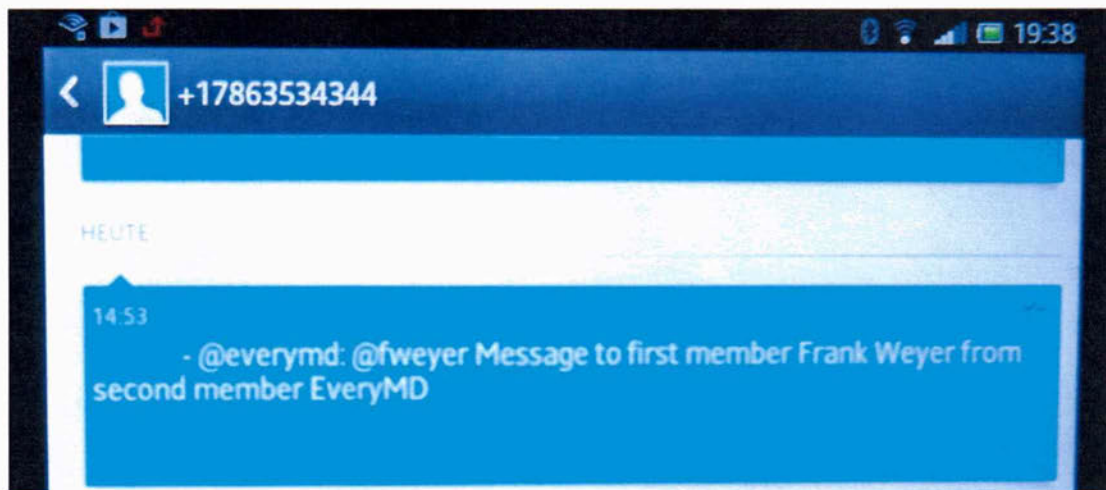
21. When the second member enters input data into the message interface from the second member's internet access device and presses the "Tweet" button, the first input data is received by Twitter's server computer system, as indicated by the input data now being displayed on the web page provided by the Twitter server computer system as a posted message with an indicated time of posting, as shown in the screen capture below. In the screen capture below, the web page indicates that the input data was received by Twitter's server computer system four minutes ("4m") ago:

22. The next limitation of claim 1 of the '631 patent states:

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"said server computer system sending a second message to a telephone number associated with said first member notifying said first member of said first input data;."
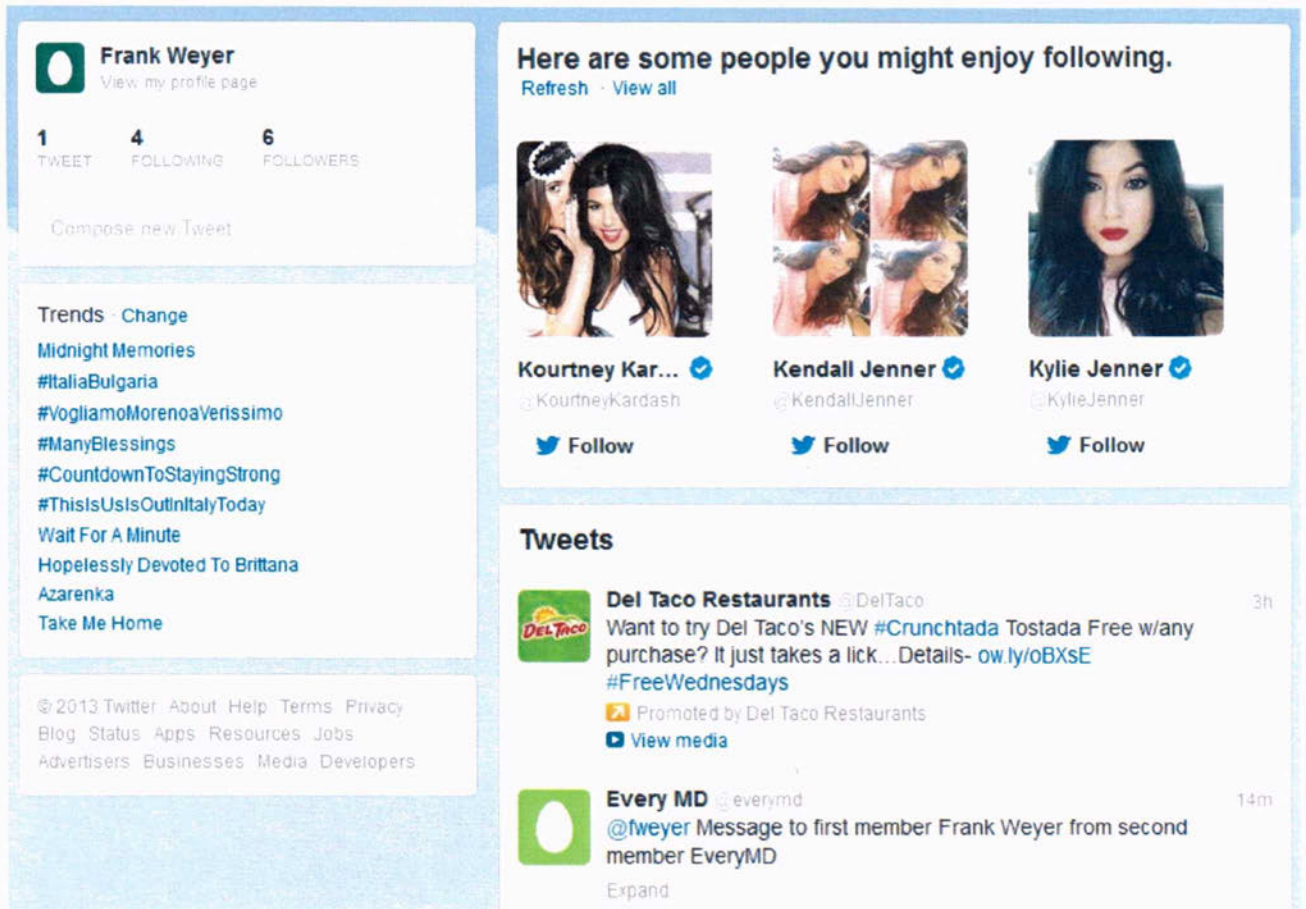
3
4   23.   Twitter allows members to indicate a telephone number at which to

5   receive notifications of online messages. If a member has elected to receive phone

6   notifications, Twitter's server computer system sends an SMS message ("second

7   message") to the telephone number of the first member notifying the first member of

8   the data input into the message interface by the second member. Below is a

9   photograph of an example of such an SMS message sent to the first member's

10   telephone number:

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19   24.   The last limitation of claim 1 of the '631 patent states:

20   *"said server computer system sending a third message to said first server*

21   *created email box of said first member, said third message comprising said first input*

22   *data."*

23   25.   Twitter's server computer system also sends a message ("third message")

24   comprising the input data to the member's Twitter created email box. Below is a

25   screen capture of such a "third message" sent by the Twitter server computer system

26   to the first server created email address "@fweyer" of first member "Frank Weyer":

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Complaint

26.   A second example of how Defendant directly infringes claim 1 of the '631 patent is set forth in paragraphs 27 to 36 below.

27.   The preamble of claim 1 of the '631 patent states:

"*1. A method for providing for communications by a server computer system among a first member of a group of members for whom said server computer system has created a first server created email box and a second member of said group of members for whom said server computer system has created a second server created email box, said method comprising the steps of:*"

28.   Twitter provides communications between Twitter members. For each Twitter member, Twitter's server computer system creates an email box, typically having the format "@*name*". Examples of email boxes created by Twitter's server computer system are "@fweyer" (first server created mailbox for first member "Frank

Complaint

Weyer") and "@everymd" (second server created mailbox for second member "Every MD").
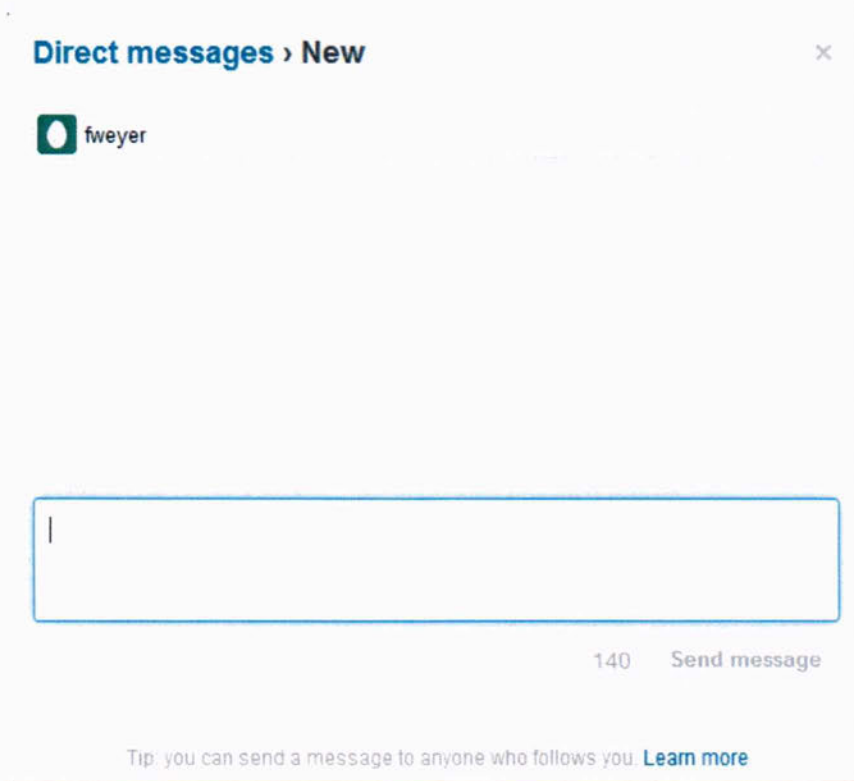
29. The limitation of claim 1 that follows the preamble of claim 1 of the '631 patent states:

"said server computer system transmitting a first server created web page to a first internet access device of said second member, said first server created web page comprising a message interface for receiving by said server computer system input data comprising a first message to said first member;".

30. Twitter's server computer system transmits various server created web pages to an internet access device of a member (i.e. a "second member") that provide message interfaces for receiving data comprising messages to another member (i.e. the "first member"). The screen capture below shows an example of such a "first server created web page" that includes a second type of such a "message interface." In the screen capture below, the web page including the message interface has been provided to the second member "Every MD" for receiving data comprising a first message ("Direct Message") to first member "Frank Weyer."

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Complaint

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Direct messages › New   ×

fweyer

|

140   Send message

Tip: you can send a message to anyone who follows you. **Learn more**

15   31.   The next limitation of claim 1 of the '631 patent states:

16   *"said server computer system receiving first input data entered into said*

17   *message interface from said first internet access device of said second member;"*

18   32.   When the second member enters input data into the message interface

19   from the second member's internet access device and presses the "Send Message"

20   button, the first input data is received by Twitter's server computer system, as

21   indicated by the input data now being displayed on the web page provided by the

22   Twitter server computer system as a posted message with an indicated time of posting,

23   as shown in the screen capture below. In the screen capture below, the web page

24   indicates that the input data was received by Twitter's server computer system two

25   minutes ("2m") ago:

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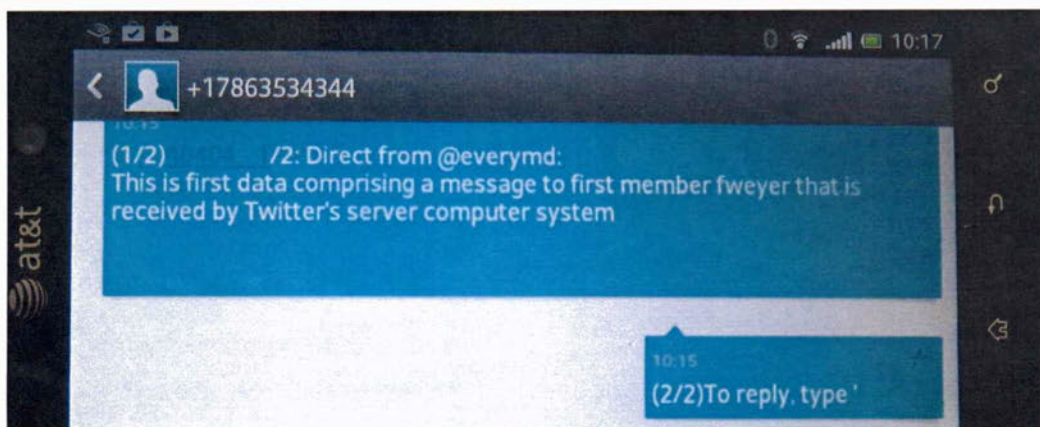**Direct messages › with Frank Weyer**   ×

This is first data comprising a message to first
member fweyer that is received by Twitter's server
computer system

33.   The next limitation of claim 1 of the '631 patent states:

"said server computer system sending a second message to a telephone number associated with said first member notifying said first member of said first input data;."

34.   Twitter allows members to indicate a telephone number at which to receive notifications of online messages. If a member has elected to receive phone notifications, Twitter's server computer system sends an SMS message ("second message") to the telephone number of the first member notifying the first member of the data input into the message interface by the second member. Below is a photograph of an example of such an SMS message sent to the first member's telephone number:
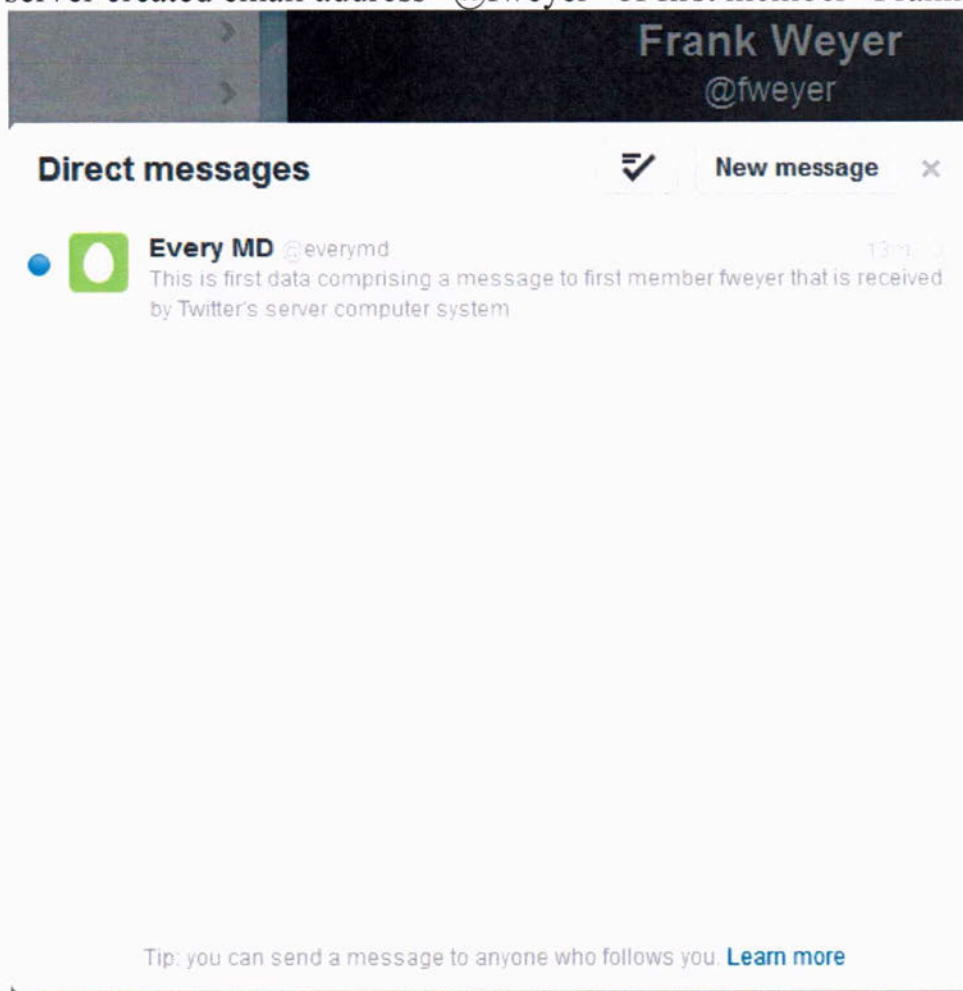

+17863534344

(1/2)   /2: Direct from @everymd:
This is first data comprising a message to first member fweyer that is
received by Twitter's server computer system

10:15
(2/2)To reply, type '

35.   The last limitation of claim 1 of the '631 patent states:

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"said server computer system sending a third message to said first server created email box of said first member, said third message comprising said first input data."

36.   Twitter's server computer system also sends a message ("third message") comprising the input data to the member's Twitter created email box. Below is a screen capture of such a "third message" sent by the Twitter server computer system to the first server created email address "@fweyer" of first member "Frank Weyer":

37.   Plaintiff has provided constructive notice of the '631 patent by marking the www.everymd.com website with the '631 patent number.

38.   Defendant has constructive and actual notice of Plaintiff' patent rights but Defendant continues to act in conscious and willful disregard of those rights.

39.   Defendant's infringements of Plaintiff's patent rights have irreparably damaged Plaintiff and will continue to cause irreparable harm unless enjoined by the Court.

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Complaint

DEMAND FOR RELIEF

WHEREFORE, Plaintiff asks this Court to:

    a.   Enter judgment for Plaintiff against Defendant on this Complaint;

    b.   Enter a preliminary and permanent injunction to enjoin Defendant, and all those in privity with Defendant, from further infringement of the '631 patent during the remaining term of the patent;

    c.   Award compensatory damages to Plaintiff and to increase those damages three times in accordance with 35 U.S.C. § 284;

    d.   Award Plaintiff reasonable attorneys' fees in accordance with 35 U.S.C. § 285;

    e.   Award Plaintiff interest and costs; and

    f.   Award Plaintiff such other and further relief as is just and proper.

DEMAND FOR JURY TRIAL

    Plaintiff hereby demands a trial by jury of all issues so triable.

Respectfully submitted,
TECHCOASTLAW®

Dated: September 10, 2013   By: _____

Frank M. Weyer (State Bar No. 127011)
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Attorney for Plaintiff
EVERYMD.COM LLC

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Telephone: (310) 494-6616

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

EVERYMD.COM LLC, a California Limited Liability Company,	CASE NUMBER
PLAINTIFF(S) v.	**CV13-06680** JEM
TWITTER, INC., a Delaware Corporation,	**SUMMONS**
DEFENDANT(S).	

TO: DEFENDANT(S):

A lawsuit has been filed against you.

Within __21__ days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☑ complaint ☐ _____ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, _Frank M. Weyer_____, whose address is _Techcoastlaw, 2032 Whitley Ave., Los Angeles, CA 90068_____. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: SEP 12 2013

By: _____
        Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

CV-01A (10/11)   SUMMONS

COVY

CIVIL COVER SHEET

I. (a) PLAINTIFFS (Check box if you are representing yourself ☐)

EVERYMD.COM LLC, a California Limited Liability Company

DEFENDANTS (Check box if you are representing yourself ☐)

TWITTER, INC., a Delaware Corporation

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

FRANK M. WEYER (BAR NO. 127,011)
TECHCOASTLAW
2032 WHITLEY AVE, LOS ANGELES CA 90068
310-494-6616

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

II. BASIS OF JURISDICTION (Place an X in one box only.)

☐ 1. U.S. Government Plaintiff

☒ 3. Federal Question (U.S. Government Not a Party)

☐ 2. U.S. Government Defendant

☐ 4. Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES-For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business in this State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business in Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. ORIGIN (Place an X in one box only.)

☒ 1. Original Proceeding

☐ 2. Removed from State Court

☐ 3. Remanded from Appellate Court

☐ 4. Reinstated or Reopened

☐ 5. Transferred from Another District (Specify)

☐ 6. Multi-District Litigation

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check "Yes" only if demanded in complaint.)

CLASS ACTION under F.R.Cv.P. 23: ☐ Yes ☒ No   ☐ MONEY DEMANDED IN COMPLAINT: $ _____

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Patent Infringement under 35 U.S.C. 271(a)

VII. NATURE OF SUIT (Place an X in one box only).

OTHER STATUTES	CONTRACT	REAL PROPERTY CONT.	IMMIGRATION	PRISONER PETITIONS	PROPERTY RIGHTS
☐ 375 False Claims Act	☐ 110 Insurance	☐ 240 Torts to Land	☐ 462 Naturalization Application	**Habeas Corpus:**	☐ 820 Copyrights
☐ 400 State Reapportionment	☐ 120 Marine	☐ 245 Tort Product Liability	☐ 465 Other Immigration Actions	☐ 463 Alien Detainee	☒ 830 Patent
☐ 410 Antitrust	☐ 130 Miller Act	☐ 290 All Other Real Property		☐ 510 Motions to Vacate Sentence	☐ 840 Trademark
☐ 430 Banks and Banking	☐ 140 Negotiable Instrument	**TORTS**	**TORTS**	☐ 530 General	**SOCIAL SECURITY**
☐ 450 Commerce/ICC Rates/Etc.	☐ 150 Recovery of Overpayment & Enforcement of Judgment	**PERSONAL INJURY**	**PERSONAL PROPERTY**	☐ 535 Death Penalty	☐ 861 HIA (1395ff)
☐ 460 Deportation		☐ 310 Airplane	☐ 370 Other Fraud	**Other:**	☐ 862 Black Lung (923)
☐ 470 Racketeer Influenced & Corrupt Org.	☐ 151 Medicare Act	☐ 315 Airplane Product Liability	☐ 371 Truth in Lending	☐ 540 Mandamus/Other	☐ 863 DIWC/DIWW (405 (g))
☐ 480 Consumer Credit	☐ 152 Recovery of Defaulted Student Loan (Excl. Vet.)	☐ 320 Assault, Libel & Slander	☐ 380 Other Personal Property Damage	☐ 550 Civil Rights	☐ 864 SSID Title XVI
☐ 490 Cable/Sat TV		☐ 330 Fed. Employers' Liability	☐ 385 Property Damage Product Liability	☐ 555 Prison Condition	☐ 865 RSI (405 (g))
☐ 850 Securities/Commodities/Exchange	☐ 153 Recovery of Overpayment of Vet. Benefits	☐ 340 Marine	**BANKRUPTCY**	☐ 560 Civil Detainee Conditions of Confinement	**FEDERAL TAX SUITS**
☐ 890 Other Statutory Actions	☐ 160 Stockholders' Suits	☐ 345 Marine Product Liability	☐ 422 Appeal 28 USC 158	**FORFEITURE/PENALTY**	☐ 870 Taxes (U.S. Plaintiff or Defendant)
☐ 891 Agricultural Acts	☐ 190 Other Contract	☐ 350 Motor Vehicle	☐ 423 Withdrawal 28 USC 157	☐ 625 Drug Related Seizure of Property 21 USC 881	☐ 871 IRS-Third Party 26 USC 7609
☐ 893 Environmental Matters	☐ 195 Contract Product Liability	☐ 355 Motor Vehicle Product Liability	**CIVIL RIGHTS**	☐ 690 Other	
☐ 895 Freedom of Info. Act	☐ 196 Franchise	☐ 360 Other Personal Injury	☐ 440 Other Civil Rights	**LABOR**	
☐ 896 Arbitration	**REAL PROPERTY**	☐ 362 Personal Injury-Med Malpratice	☐ 441 Voting	☐ 710 Fair Labor Standards Act	
☐ 899 Admin. Procedures Act/Review of Appeal of Agency Decision	☐ 210 Land Condemnation	☐ 365 Personal Injury-Product Liability	☐ 442 Employment	☐ 720 Labor/Mgmt. Relations	
	☐ 220 Foreclosure	☐ 367 Health Care/Pharmaceutical Personal Injury Product Liability	☐ 443 Housing/Accomodations	☐ 740 Railway Labor Act	
☐ 950 Constitutionality of State Statutes	☐ 230 Rent Lease & Ejectment	☐ 368 Asbestos Personal Injury Product Liability	☐ 445 American with Disabilities-Employment	☐ 751 Family and Medical Leave Act	
			☐ 446 American with Disabilities-Other	☐ 790 Other Labor Litigation	
			☐ 448 Education	☐ 791 Employee Ret. Inc. Security Act	

FOR OFFICE USE ONLY: Case Number: **CV13-06680**

AFTER COMPLETING PAGE 1 OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED ON PAGE 2.

CV-71 (02/13)   CIVIL COVER SHEET   Page 1 of 2

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ NO ☐ YES

If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ NO ☐ YES

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

(Check all boxes that apply)   ☐ A. Arise from the same or closely related transactions, happenings, or events; or

☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or

☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or

☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.

☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
LOS ANGELES	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.

☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
LOS ANGELES	

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
NOTE: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
LOS ANGELES	

*Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties
Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR SELF-REPRESENTED LITIGANT): _____ DATE: SEPTEMBER 10, 2013

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))