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8 Attorney for Plaintiff
9 EveryMD LLC

10
11 **IN THE UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 EVERYMD LLC, a California
14 Limited Liability Company,

15 Plaintiff,

16 v.

17 EBAY INC., a Delaware
18 Corporation,

19 Defendant.

Civil Action No. 2:13-CV-08017

**COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

20 COMES NOW, Plaintiff EVERYMD LLC (“Plaintiff” or “EveryMD”), and on
21 information and belief alleges as follows:
22

23 **JURISDICTION AND VENUE**

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

26 2. The acts of patent infringement alleged herein occurred within this
27 judicial district, Plaintiff resides in this district, and Defendant EBAY INC.
28

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

3
4 **PARTIES**

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

7 4. Defendant is a Delaware Corporation with a place of business at 2065
8 Hamilton Avenue San Jose, California 95125.

9
10 **FIRST CAUSE OF ACTION**
11 **PATENT INFRINGEMENT**

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

14 6. Plaintiff operates the website www.everymd.com.

15 7. Plaintiff’s website at www.everymd.com has since the year 2000
16 provided e-mail messaging services allowing patients to communicate with over
17 300,000 doctors.

18 8. Plaintiff’s principals Frank Weyer and Troy Javaher (collectively, “the
19 EveryMD inventors”) invented numerous novel technologies and inventions during
20 development of the www.everymd.com website.

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

26
27 10. To date, four separate patents covering four separate inventions have
28 issued from the patent application originally filed in November 1999. Those patents

1 are U.S. Patent Nos. 6,671,714 (issued December 30, 2003), 7,644,122 (issued
2 January 5, 2010), 8,499,047 (issued July 30, 2013), and 8,504,631 (issued August 6,
3 2013).
4

5 11. Plaintiff is the assignee of record of U.S. Patent No. 8,499,047 entitled
6 “Method, Apparatus and Business System for Online Communications with Online
7 and Offline Recipients” (“the ‘047 patent”).

8 12. The ‘047 patent is valid and in full force and effect.

9 13. The ‘047 patent is directed to a novel method for providing e-mail
10 communications by a computer system.

11 14. Defendant directly infringes the ‘047 patent by practicing the claimed
12 invention of the ‘047 patent without authorization of Plaintiff.

13 15. One example of how Defendant directly infringes claims 1-6 of the ‘047
14 patent is set forth in paragraphs 16 to 35 below.
15

16 16. The preamble of claim 1 of the ‘047 patent states:

17 “1. *A method for providing e-mail communications between a sender and a*
18 *recipient by a first computer system comprising the steps of:*”

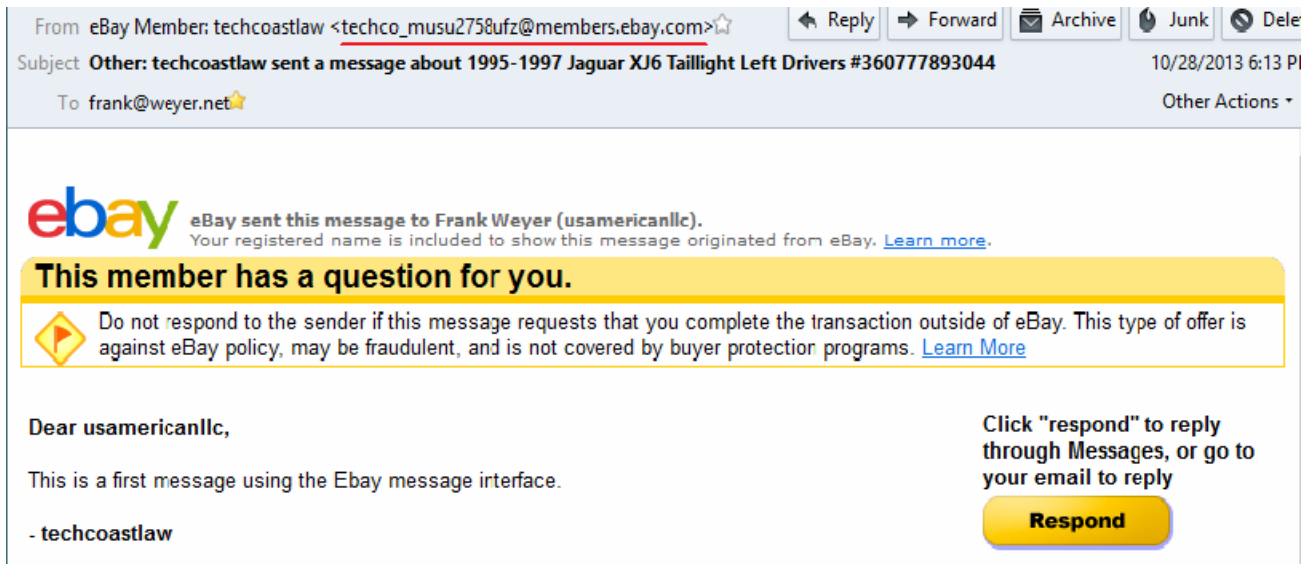
19 17. eBay’s computer system provides e-mail communications between eBay
20 members.
21

22 18. The limitation of claim 1 that follows the preamble of claim 1 of the ‘047
23 patent states:

24 “*said first computer system creating a first created e-mail address for a*
25 *recipient*”.

26 19. When a first eBay member sends a message from the eBay website to a
27 second eBay member, the eBay computer system creates an e-mail address at which
28 the first eBay member can receive a reply message. That created reply-to e-mail

1 address is an example of the claimed “first created e-mail address for a recipient.” In
 2 the example screenshot below, that first created e-mail address is
 3 “techco_musu2758ufz@members.ebay.com” which the eBay computer system
 4 created for the first member (“techcoastlaw”).
 5

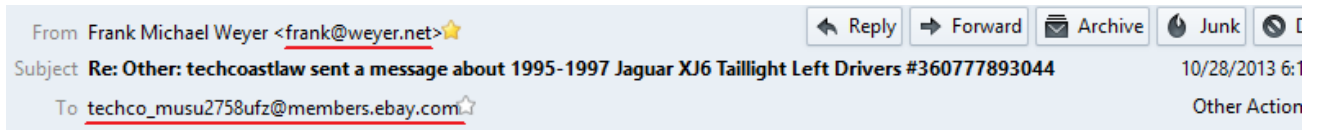


15 20. The next limitation of claim 1 of the ‘047 patent states:

16
 17 *“said first computer system receiving an incoming first e-mail message from a*
 18 *sending entity other than said first computer system comprising a first existing e-mail*
 19 *address of a sender addressed to said first created e-mail address of said recipient”.*

20 21. When the second eBay member (e.g. “usamericanllc”) replies to the
 21 message from the first eBay member (e.g. “techcoastlaw”), the e-mail that is sent by
 22 the second eBay member (the “sender”) and received by eBay’s computer is (1)
 23 addressed to the first created e-mail address of the first eBay member (the
 24 “recipient”), (2) is sent from the second member’s e-mail server (not the eBay
 25 computer), and (3) contains the existing e-mail address of the (sending) second eBay
 26 member. In the example screenshot below, which shows an e-mail reply to the above
 27 e-mail, the e-mail is addressed to the first created e-mail address
 28

1 “techco_musu2758ufz@members.ebay.com” and the e-mail comprises the senders
 2 first existing e-mail address “frank@weyer.net”.



This is a reply sent from frank@weyer.net

6 On 10/28/2013 6:13 PM, eBay Member: techcoastlaw wrote:



8 eBay sent this message to Frank Weyer (usamericanllc).
 Your registered name is included to show this message originated from eBay. [Learn more.](#)

9 **This member has a question for you.**



11 Do not respond to the sender if this message requests that you complete the transaction outside of eBay. This type of offer is against eBay policy, may be fraudulent, and is not covered by buyer protection programs. [Learn More](#)

12 Dear usamericanllc,

13 This is a first message using the Ebay message interface.

14 - techcoastlaw

Click "respond" to reply through Messages, or go to your email to reply

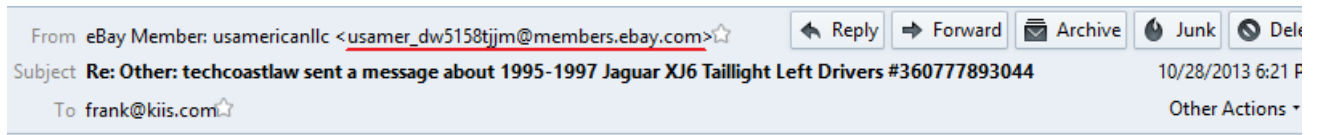
Respond

15 22. The next limitation of claim 1 of the '047 patent states:

16 “said first computer system creating a second created e-mail address for said
 17 sender different from said first existing e-mail address and from said first created e-
 18 mail address; said first computer system creating a first modified e-mail message by
 19 replacing said first existing e-mail address in said incoming first e-mail message with
 20 said second created e-mail address; said first computer system delivering said first
 21 modified e-mail message to said recipient”.


22 23. After the eBay server computer receives the reply e-mail message and
 23 before forwarding it to the recipient, the eBay server creates an e-mail address for the
 24 sender (the claimed “second created e-mail address”) and modifies the e-mail message
 25 by replacing the sender’s existing e-mail address with the second created e-mail
 26 address, as shown in the screenshot showing the reply e-mail after it has been
 27 forwarded to the recipient. In the screenshot below, the sender’s (“first”) existing e-
 28

1 mail address “frank@weyer.net” has been replaced with the second created e-mail
2 address: “usamer_dw5158tjjm@members.ebay.com” which is different from the
3 recipient’s first created e-mail address, which is
4 “techco_musu2758ufz@members.ebay.com”.



eBay sent this message to Techcoast Law (techcoastlaw).
Your registered name is included to show this message originated from eBay. [Learn more.](#)

Seller has responded to your question about this item

 Do not respond to the sender if this message requests that you complete the transaction outside of eBay. This type of offer is against eBay policy, may be fraudulent, and is not covered by buyer protection programs. [Learn More](#)

Dear techcoastlaw,

This is a reply sent from frank@weyer.net

On 10/28/2013 6:13 PM, eBay Member: techcoastlaw wrote:

Click "respond" to reply through Messages, or go to your email to reply



24. The last limitation of claim 1 of the ‘047 patent states:

“wherein said step of said first computer system delivering said first modified e-mail message to said recipient comprises said first computer system sending said first modified e-mail message to a second existing e-mail address of said recipient different from said first created e-mail address of said recipient.”

25. In delivering the modified e-mail message to the recipient, the eBay server sends the e-mail message to an existing e-mail address of the recipient, which is the claimed “second existing e-mail address”. As shown in the screenshot below, the eBay server sent the modified message to “frank@kiis.com”, which is the claimed “second existing e-mail address”, and which is different from the first created e-mail address for the recipient, i.e. “techco_musu2758ufz@members.ebay.com”.

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1 //

2 From eBay Member: usamericanllc <usamer_dw5158tjjm@members.ebay.com>☆ Reply Forward Archive Junk Delete

3 Subject **Re: Other: techcoastlaw sent a message about 1995-1997 Jaguar XJ6 Taillight Left Drivers #360777893044** 10/28/2013 6:21 P

4 To frank@kiis.com☆ Other Actions ▾



eBay sent this message to Techcoast Law (techcoastlaw). Your registered name is included to show this message originated from eBay. [Learn more.](#)

Seller has responded to your question about this item

Do not respond to the sender if this message requests that you complete the transaction outside of eBay. This type of offer is against eBay policy, may be fraudulent, and is not covered by buyer protection programs. [Learn More](#)

9 Dear techcoastlaw,

10 This is a reply sent from frank@weyer.net

11 On 10/28/2013 6:13 PM, eBay Member: techcoastlaw wrote:

Click "respond" to reply through Messages, or go to your email to reply

Respond

12 26. Claim 2 of the '047 patent states:

13 *"2. The method of claim 1 further comprising the step of: said first computer*
14 *system receiving a second incoming e-mail message comprising said second existing*
15 *e-mail address from said recipient addressed to said second created e-mail address."*

16 27. When the recipient replies to the message received from the sender, the
17 message sent by the recipient and received by eBay's computer ("second incoming e-
18 mail message") comprises the recipient's ("second") existing e-mail address
19 ("frank@kiis.com") and is addressed to the second created e-mail address, namely
20 "usamer_dw5158tjjm@members.ebay.com," as shown in the screenshot below.

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //

1 From Frank Michael Weyer <frank@kiis.com>
 2 Subject Re: Other: techcoastlaw sent a message about 1995-1997 Jaguar XJ6 Taillight Left Drivers #360777893044
 3 To usamer_dw5158tjjm@members.ebay.com

This is a reply message sent from the recipient, techcoastlaw.

On 10/28/2013 6:21 PM, eBay Member: usamericanllc wrote:

6 **ebay** eBay sent this message to Techcoast Law (techcoastlaw).
 Your registered name is included to show this message originated from eBay. [Learn more.](#)

7 **Seller has responded to your question about this item**

8 Do not respond to the sender if this message requests that you complete the transaction outside of eBay. This type of offer is against eBay policy, may be fraudulent, and is not covered by buyer protection programs. [Learn More](#)

9 Dear techcoastlaw,

10 This is a reply sent from frank@weyer.net

11 On 10/28/2013 6:13 PM, eBay Member: techcoastlaw wrote:

12 **Respond**

13 28. Claim 3 of the '047 patent states:

14
 15 “3. The method of claim 2 further comprising the step of: said first computer
 16 system creating a second modified e-mail message by replacing said second created e-
 17 mail address in said second incoming e-mail message with said first existing e-mail
 18 address.”

19 29. As shown in the screenshot below, the eBay computer replaces the
 20 second created e-mail address in the second incoming e-mail message
 21 (“usamer_dw5158tjjm@members.ebay.com”) with the first existing e-mail address
 22 (“frank@weyer.net”).

23 //

24 //

25 //

26 //

27 //

28 //


1 From eBay Member: techcoastlaw <techco_musu2758ufz@members.ebay.com>☆ Reply Forward Archive Junk Dele

2 Subject **Re: Other: techcoastlaw sent a message about 1995-1997 Jaguar XJ6 Taillight Left Drivers #360777893044** 10:44 A

To frank@weyer.net☆ Other Actions ▾

3  eBay sent this message to Frank Weyer (usamericanllc).
 4 Your registered name is included to show this message originated from eBay. [Learn more.](#)

5 **Buyer has responded to your question about this item**

6  Do not respond to the sender if this message requests that you complete the transaction outside of eBay. This type of offer is against eBay policy, may be fraudulent, and is not covered by buyer protection programs. [Learn More](#)

7 Dear usamericanllc,

8 This is a reply message sent from the recipient, techcoastlaw.

9 On 10/28/2013 6:21 PM, eBay Member: usamericanllc wrote:

Click "respond" to reply through Messages, or go to your email to reply

Respond

10 30. Claim 4 of the '047 patent states:

11 *"4. The method of claim 3 further comprising the step of said first computer*
 12 *system replacing said second existing e-mail address with said first created e-mail*
 13 *address."*

14 31. As shown in the screenshot below, the eBay computer replaces the
 15 second existing e-mail address in the second incoming e-mail message
 16 ("frank@kiis.com") with the first created e-mail address
 17 ("techco_musu2758ufz@members.ebay.com").


18 From eBay Member: techcoastlaw <techco_musu2758ufz@members.ebay.com>☆ Reply Forward Archive Junk Dele

19 Subject **Re: Other: techcoastlaw sent a message about 1995-1997 Jaguar XJ6 Taillight Left Drivers #360777893044** 10:44 A

To frank@weyer.net☆ Other Actions ▾

20  eBay sent this message to Frank Weyer (usamericanllc).
 21 Your registered name is included to show this message originated from eBay. [Learn more.](#)

22 **Buyer has responded to your question about this item**

23  Do not respond to the sender if this message requests that you complete the transaction outside of eBay. This type of offer is against eBay policy, may be fraudulent, and is not covered by buyer protection programs. [Learn More](#)

24 Dear usamericanllc,

25 This is a reply message sent from the recipient, techcoastlaw.

26 On 10/28/2013 6:21 PM, eBay Member: usamericanllc wrote:

Click "respond" to reply through Messages, or go to your email to reply

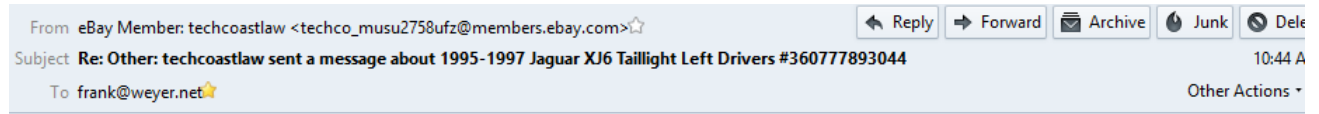
Respond

27 32. Claim 5 of the '047 patent states:

28


1 “5. The method of claim 3 further comprising the step of said first computer
2 system delivering said second modified e-mail message to said sender.”

3
4 33. eBay’s computer delivers the second modified e-mail message to “said
5 sender” (“usamericanllc”), as shown in the screenshot of the second modified e-mail
6 message as actually received by eBay member “usamericanllc” below.



7
8
9  eBay sent this message to Frank Weyer (usamericanllc).
Your registered name is included to show this message originated from eBay. [Learn more.](#)

10 **Buyer has responded to your question about this item**

11  Do not respond to the sender if this message requests that you complete the transaction outside of eBay. This type of offer is against eBay policy, may be fraudulent, and is not covered by buyer protection programs. [Learn More](#)

12 Dear usamericanllc,

13 This is a reply message sent from the recipient, techcoastlaw.

14 On 10/28/2013 6:21 PM, eBay Member: usamericanllc wrote:

Click "respond" to
reply through
Messages, or go to
your email to reply

Respond

15 34. Claim 6 of the ‘047 patent states:

16 “6. The method of claim 5 wherein said step of said first computer system
17 delivering said second modified e-mail message to said recipient comprises said first
18 computer system sending said second modified e-mail message to said first existing e-
19 mail address.”

20
21 35. eBay’s computer delivers the second modified e-mail message to “said
22 sender” (“usamericanllc”), as shown in the screenshot of the second modified e-mail
23 message as received by eBay member “usamericanllc” at that member’s “first”
24 existing e-mail address “frank@weyer.net” below.

25 //

26 //

27 //

28

1 From eBay Member: techcoastlaw <techco_musu2758ufz@members.ebay.com>
 2 Subject Re: Other: techcoastlaw sent a message about 1995-1997 Jaguar XJ6 Taillight Left Drivers #360777893044
 To frank@weyer.net



eBay sent this message to Frank Weyer (usamericanllc).
 Your registered name is included to show this message originated from eBay. [Learn more.](#)

Buyer has responded to your question about this item

Do not respond to the sender if this message requests that you complete the transaction outside of eBay. This type of offer is against eBay policy, may be fraudulent, and is not covered by buyer protection programs. [Learn More](#)

Dear usamericanllc,

This is a reply message sent from the recipient, techcoastlaw.

On 10/28/2013 6:21 PM, eBay Member: usamericanllc wrote:

Click "respond" to reply through Messages, or go to your email to reply

Respond

36. Plaintiff has provided constructive notice of the '047 patent by marking the www.everymd.com website with the '047 patent number since at least as early as August 20, 2013.

37. Defendant has had constructive and actual notice of Plaintiff' patent rights, but Defendant continues to willfully infringe those rights.

38. 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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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 '047 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: October 30, 2013

By: 
 Frank M. Weyer (State Bar No. 127011)
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 fweyer@techcoastlaw.com
 Attorney for Plaintiff
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