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Attorney for Plaintiff
EveryMD LLC

IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

EVERYMD LLC, a California Limited Liability Company,	Civil Action No. 2:13-CV-06208-SJO(PLAx)
Plaintiff,	
v.	**AMENDED COMPLAINT FOR PATENT INFRINGEMENT**
FACEBOOK, INC., a Delaware Corporation,	**DEMAND FOR JURY TRIAL**
Defendant.	

COMES NOW, Plaintiff EVERYMD 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 FACEBOOK, INC.

("Defendant" or "Facebook") 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 1601 Willow Road, Menlo Park, CA 94025.

5. Defendant's current market value is a multiple of defendant's annual earnings.

6. Defendant's current market value is over 200 (two hundred) times its annual earnings.

FIRST CAUSE OF ACTION
PATENT INFRINGEMENT

7. Plaintiff incorporates by reference paragraphs 1–6 as though fully set forth herein.

8. Plaintiff operates the website www.everymd.com.

9. 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.

10. 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.

11. 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

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inventions made by the EveryMD inventors while developing the www.everymd.com website.

12.   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).

13.   Plaintiff is the assignee of record of U.S. Patent No. 8,499,047 entitled "Method, Apparatus and Business System for Online Communications with Online and Offline Recipients" ("the '047 patent").

14.   The '047 patent is valid and in full force and effect.

15.   The '047 patent is directed to a novel method for providing email communications by a computer system.

16.   Defendant directly infringes the '047 patent by practicing the claimed invention of the '047 patent without authorization of Plaintiff.

17.   One example of how Defendant directly infringes claims 1-3 and 5-6 of the '047 patent is set forth in paragraphs 18 to 43 below.

18.   The preamble of claim 1 of the '047 patent states:

"*1.   A method for providing e-mail communications between a sender and a recipient by a first computer system comprising the steps of*:"
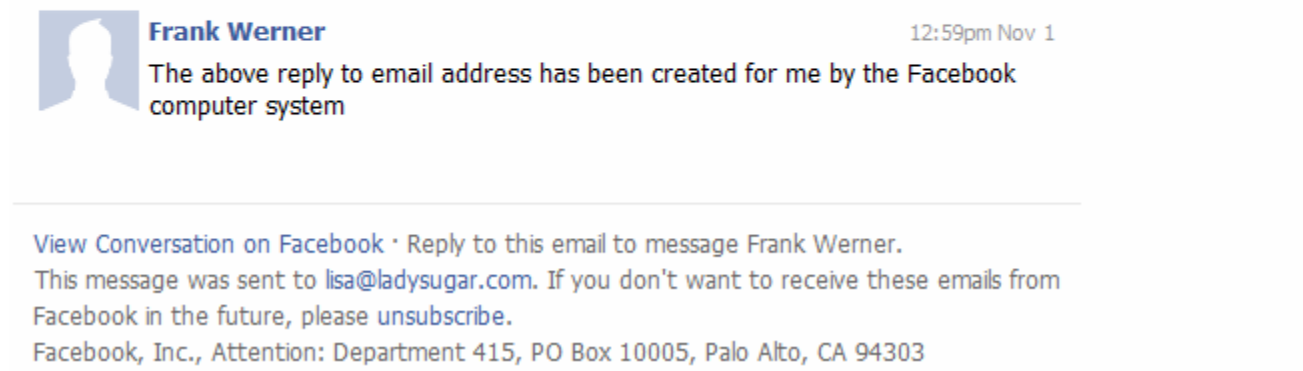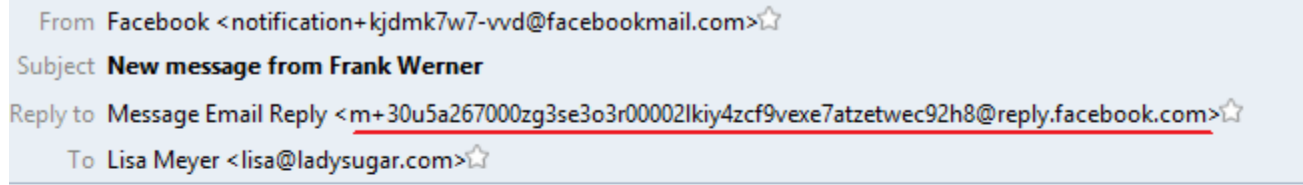
19.   Facebook´s computer system provides e-mail communications between Facebook members.

20.   The limitation of claim 1 that follows the preamble of claim 1 of the '047 patent states:

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"*said first computer system creating a first created e-mail address for a recipient*".

21.   When a first Facebook member sends a message from the Facebook website to a second Facebook member, the Facebook computer system creates an e-mail address at which the Facebook member can receive a reply message. That created reply-to email address is an example of the claimed *first created e-mail address for a recipient*, where the *recipient* is the first Facebook member.

22.   The example screenshot below shows an e-mail message sent from a first Facebook member <u>Frank Werner</u> to a second Facebook member <u>Lisa Meyer</u>. The e-mail message includes the *first created e-mail address* <u>m+30u5a267000zg3se3o3r00002lkiy4zcf9vexe7atzetwec92h8@reply.facebook.com</u> that the Facebook computer system created for *recipient* <u>Frank Werner</u>.

From Facebook <notification+kjdmk7w7-vvd@facebookmail.com>

Subject **New message from Frank Werner**

Reply to Message Email Reply <m+30u5a267000zg3se3o3r00002lkiy4zcf9vexe7atzetwec92h8@reply.facebook.com>

To Lisa Meyer <lisa@ladysugar.com>

Frank Werner   12:59pm Nov 1

The above reply to email address has been created for me by the Facebook computer system

View Conversation on Facebook · Reply to this email to message Frank Werner.
This message was sent to lisa@ladysugar.com. If you don't want to receive these emails from Facebook in the future, please unsubscribe.
Facebook, Inc., Attention: Department 415, PO Box 10005, Palo Alto, CA 94303

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

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

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24.   When a second Facebook member replies to an e-mail message from a first Facebook member that contains a *first created e-mail address*, the e-mail sent by the second member (1) is received by the Facebook computer system, (2) is addressed to the first created email address, (3) is sent from the second member's email server (not the Facebook computer system), and (4) contains the existing email address of the (sending) second Facebook member.

25. The example screenshot below shows an *incoming first e-mail message* in the form it was sent by Facebook member <u>Lisa Meyer</u> and received by the Facebook computer system as a reply to the e-mail message depicted in paragraph 22 above. The e-mail message was sent from <u>Lisa Meyer's</u> SMTP mail server, which is a *sending entity other than the first* (Facebook) *computer system.* It is addressed to the *first created email address* <u>m+30u5a267000zg3se3o3r00002lkiy4zcf9vexe7atzetwec92h8@reply.facebook.com,</u> and comprises the *first existing email address of the sender*, namely <u>lisa@ladysugar.com.</u>

From Lisa Meyer <lisa@ladysugar.com>☆
Subject **Re: New message from Frank Werner**
    To Message Email Reply <m+30u5a267000zg3se3o3r00002lkiy4zcf9vexe7atzetwec92h8@reply.facebook.com>☆

This is a message sent to the first created email address from a first existing email address.

On 11/1/2013 1:29 PM, Facebook wrote:

Frank Werner   12:59pm Nov 1
The above reply to email address has been created for me by the Facebook computer system

View Conversation on Facebook · Reply to this email to message Frank Werner.
This message was sent to lisa@ladysugar.com. If you don't want to receive these emails from Facebook in the future, please unsubscribe.
Facebook, Inc., Attention: Department 415, PO Box 10005, Palo Alto, CA 94303

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

"*said first computer system creating a second created e-mail address for said sender different from said first existing e-mail address and from said first created e-mail address; said first computer system creating a first modified e-mail message by replacing said first existing e-mail address in said incoming first e-mail message with said second created e-mail address; said first computer system delivering said first modified e-mail message to said recipient*".

27. After the Facebook computer system receives an email message addressed to the *first created e-mail address* from a *first existing e-mail address*, before forwarding it to the recipient, the Facebook computer system creates a *second created e-mail address* for the *sender* different from the *first created e-mail address* and modifies the received e-mail message by replacing the sender's *first existing e-mail address* with the *second created e-mail address*.

28. The screenshot below that shows the e-mail depicted in paragraph 25 above after it has been delivered by the Facebook computer system to the *recipient*, Facebook member Frank Werner. In the screenshot below, the sender's *first existing email address* lisa@ladysugar.com has been replaced by the Facebook computer system with the *second created email address* m+3092847x000zg3qug53y00002lkj0fzcqlcgde3cd1rsltmq2h8@reply.facebook.com, which is different from the *first created email address* m+30u5a267000zg3se3o3r00002lkiy4zcf9vexe7atzetwec92h8@reply.facebook.com.

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From Facebook <notification+kr4mkr5xa42n@facebookmail.com>

Subject **New message from Lisa Meyer**

Reply to Message Email Reply <m+3092847x000zg3qug53y00002lkj0fzcqlcgde3cd1rsltmq2h8@reply.facebook.com>

To Frank Werner <frank@ccofe.com>

Lisa Meyer   2:17pm Nov 1

This is a message sent to the first created email address from a first existing email address.

Conversation History

Frank Werner   12:59pm Nov 1

The above reply to email address has been created for me by the Facebook computer system

View Conversation on Facebook · Reply to this email to message Lisa Meyer.
This message was sent to frank@ccofe.com. If you don't want to receive these emails from Facebook in the future, please unsubscribe.
Facebook, Inc., Attention: Department 415, PO Box 10005, Palo Alto, CA 94303

29.   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.*"

30.   In delivering the *first modified e-mail message* to the *recipient*, the Facebook computer system sends the *first modified e-mail message* to a *second existing email address* of the recipient that is different from the *first created e-mail address of said recipient*.

31.   The screenshot below shows the *first modified e-mail message* depicted in paragraph 28 above as actually received by the *recipient* <u>Frank Werner</u>. As shown in the screenshot, the Facebook computer system sent the *first modified e-mail message* to the *second existing e-mail address of said recipient*, <u>frank@ccofe.com</u>,

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which is different from the *first created email address of said recipient*,

m+30u5a267000zg3se3o3r00002lkiy4zcf9vexe7atzetwec92h8@reply.facebook.com.

From Facebook <notification+kr4mkr5xa42n@facebookmail.com>

Subject **New message from Lisa Meyer**

Reply to Message Email Reply <m+3092847x000zg3qug53y00002lkj0fzcqlcgde3cd1rsltmq2h8@reply.facebook.com>

To Frank Werner <frank@ccofe.com>

Lisa Meyer   2:17pm Nov 1

This is a message sent to the first created email address from a first existing email address.

Conversation History

Frank Werner   12:59pm Nov 1

The above reply to email address has been created for me by the Facebook computer system

View Conversation on Facebook · Reply to this email to message Lisa Meyer.
This message was sent to frank@ccofe.com. If you don't want to receive these emails from Facebook in the future, please unsubscribe.
Facebook, Inc., Attention: Department 415, PO Box 10005, Palo Alto, CA 94303

32.   Claim 2 of the '047 patent states:

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

33.   When the *recipient* replies to the message received from the *sender*, the reply e-mail message is received by Facebook's computer system. This *second incoming e-mail message* comprises the recipient's *second existing e-mail address* and is addressed to the *second created e-mail address*.

34.   The screenshot below shows a *second incoming e-mail message* sent by *recipient* Frank Werner and received by the Facebook computer system. It includes the *second existing e-mail address* frank@ccofe.com and is addressed to the *second*

created e-mail address

m+3092847x000zg3qug53y00002lkj0fzcqlcgde3cd1rsltmq2h8@reply.facebook.com.

From   Frank Werner <frank@ccofe.com>

Subject   **Re: New message from Lisa Meyer**

To   Message Email Reply <m+3092847x000zg3qug53y00002lkj0fzcqlcgde3cd1rsltmq2h8@reply.facebook.com>

This is a message sent to the second created email address from a second existing email address.

On 11/1/2013 2:47 PM, Facebook wrote:

Lisa Meyer   2:17pm Nov 1

This is a message sent to the first created email address from a first existing email address.

Conversation History

Frank Werner   12:59pm Nov 1

The above reply to email address has been created for me by the Facebook computer system

View Conversation on Facebook · Reply to this email to message Lisa Meyer.
This message was sent to frank@ccofe.com. If you don't want to receive these emails from Facebook in the future, please unsubscribe.
Facebook, Inc., Attention: Department 415, PO Box 10005, Palo Alto, CA 94303

35.   Claim 3 of the '047 patent states:

"*3. The method of claim 2 further comprising the step of: said first computer system creating a second modified e-mail message by replacing said second created e-mail address in said second incoming e-mail message with said first existing e-mail address.*"

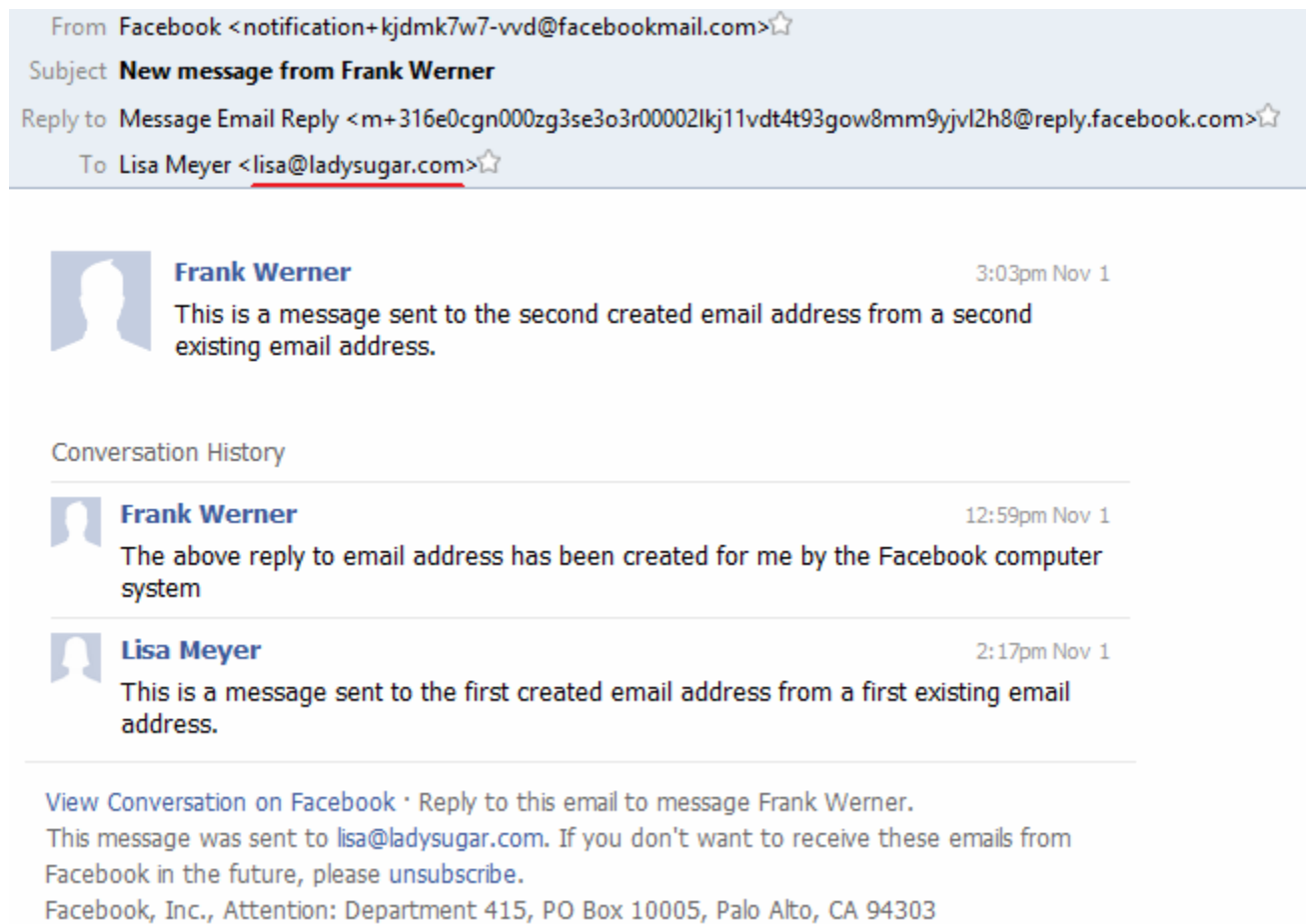36.   Upon receiving a *second incoming e-mail message*, the Facebook computer creates a *second modified e-mail message* by replacing the *second created e-mail address* in the *second incoming e-mail message* with the *first existing e-mail address*.

37. The screenshot below shows the *second incoming e-mail message* shown in paragraph 34 above after it was sent by the Facebook computer system to Facebook member <u>Lisa Meyer</u>. As shown in the screenshot, the Facebook computer system replaced created a *second modified e-mail message* by replacing the *second created e-mail address* <u>m+3092847x000zg3qug53y00002lkj0fzcqlcgde3cd1rsltmq2h8@reply.facebook.com</u> shown in the screenshot in paragraph 34 above with *the first existing e-mail address* <u>lisa@ladysugar.com</u>.

From Facebook <notification+kjdmk7w7-vvd@facebookmail.com>

Subject **New message from Frank Werner**

Reply to Message Email Reply <m+316e0cgn000zg3se3o3r00002lkj11vdt4t93gow8mm9yjvl2h8@reply.facebook.com>

To Lisa Meyer <lisa@ladysugar.com>

Frank Werner   3:03pm Nov 1

This is a message sent to the second created email address from a second existing email address.

Conversation History

Frank Werner   12:59pm Nov 1

The above reply to email address has been created for me by the Facebook computer system

Lisa Meyer   2:17pm Nov 1

This is a message sent to the first created email address from a first existing email address.

View Conversation on Facebook · Reply to this email to message Frank Werner.
This message was sent to lisa@ladysugar.com. If you don't want to receive these emails from Facebook in the future, please unsubscribe.
Facebook, Inc., Attention: Department 415, PO Box 10005, Palo Alto, CA 94303
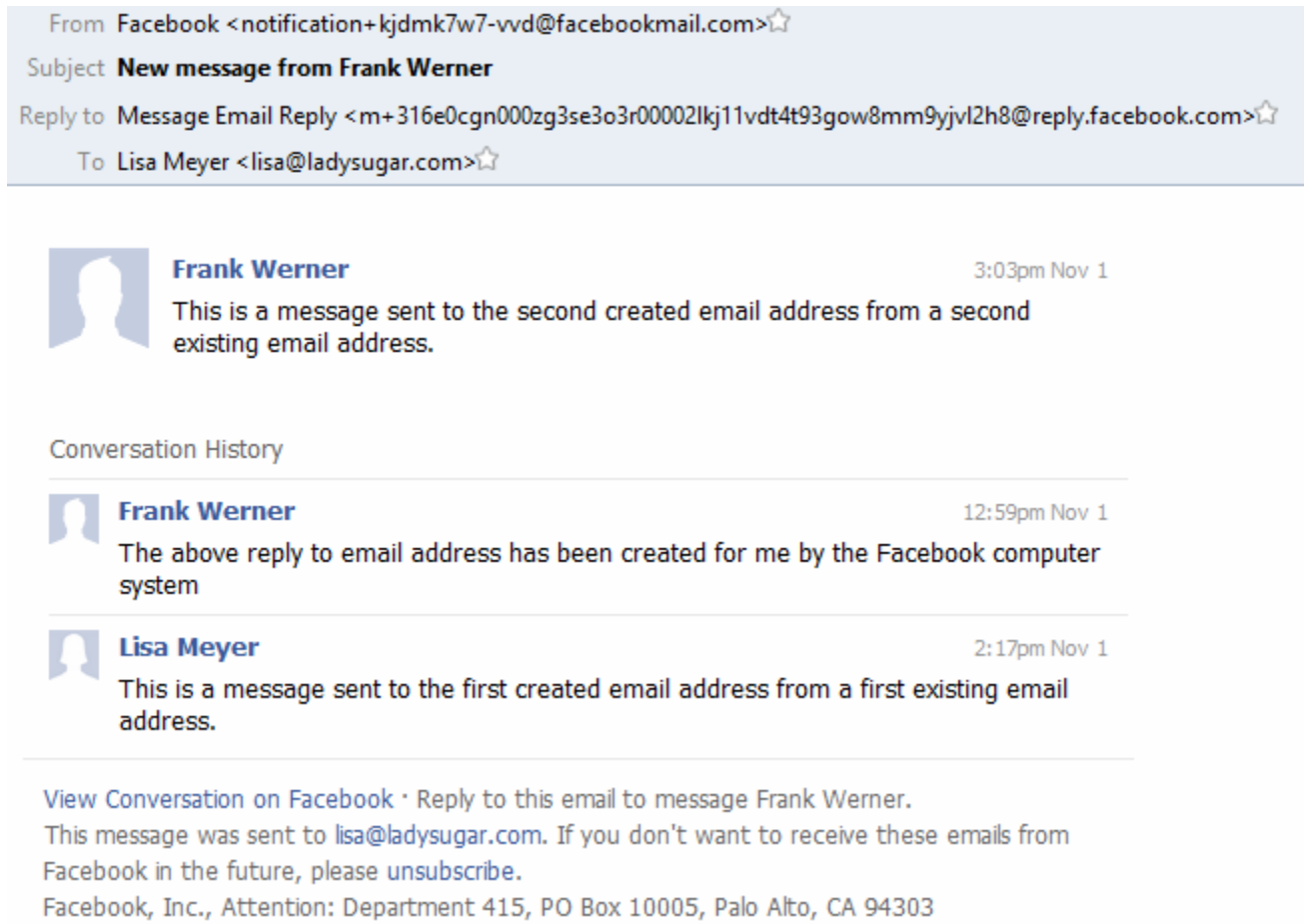
38. Claim 5 of the '047 patent states:

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

39. Facebook's computer delivers the *second modified e-mail message* to *said sender*, for whom Facebook's computer system created the *second created e-mail address*."

40. The screenshot below shows the *second modified e-mail message* shown in paragraph 37 above as actually received by Facebook member <u>Lisa Meyer</u>.

From Facebook <notification+kjdmk7w7-vvd@facebookmail.com>

Subject **New message from Frank Werner**

Reply to Message Email Reply <m+316e0cgn000zg3se3o3r00002lkj11vdt4t93gow8mm9yjvl2h8@reply.facebook.com>

To Lisa Meyer <lisa@ladysugar.com>

Frank Werner   3:03pm Nov 1

This is a message sent to the second created email address from a second existing email address.

Conversation History

Frank Werner   12:59pm Nov 1

The above reply to email address has been created for me by the Facebook computer system

Lisa Meyer   2:17pm Nov 1

This is a message sent to the first created email address from a first existing email address.

View Conversation on Facebook · Reply to this email to message Frank Werner.
This message was sent to lisa@ladysugar.com. If you don't want to receive these emails from Facebook in the future, please unsubscribe.
Facebook, Inc., Attention: Department 415, PO Box 10005, Palo Alto, CA 94303

41. Claim 6 of the '047 patent states:

"*6. The method of claim 5 wherein said step of said first computer system delivering said second modified e-mail message to said recipient comprises said first computer system sending said second modified e-mail message to said first existing e-mail address.*"

42. Facebook's computer delivers the *second modified e-mail message* by sending it to the *first existing e-mail address*.

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43.   The screenshot below shows the *second modified e-mail message* shown in paragraph 37 above as actually received by Facebook member <u>Lisa Meyer</u> at the *first existing email address* <u>lisa@ladysugar.com</u>.

From Facebook <notification+kjdmk7w7-vvd@facebookmail.com>

Subject **New message from Frank Werner**

Reply to Message Email Reply <m+316e0cgn000zg3se3o3r00002lkj11vdt4t93gow8mm9yjvl2h8@reply.facebook.com>

To Lisa Meyer <lisa@ladysugar.com>

Frank Werner   3:03pm Nov 1

This is a message sent to the second created email address from a second existing email address.

Conversation History

Frank Werner   12:59pm Nov 1

The above reply to email address has been created for me by the Facebook computer system

Lisa Meyer   2:17pm Nov 1

This is a message sent to the first created email address from a first existing email address.

View Conversation on Facebook · Reply to this email to message Frank Werner.
This message was sent to lisa@ladysugar.com. If you don't want to receive these emails from Facebook in the future, please unsubscribe.
Facebook, Inc., Attention: Department 415, PO Box 10005, Palo Alto, CA 94303

44.   Plaintiff has provided constructive notice of the '047 patent by marking the www.everymd.com website with the '047 patent number at least as early as August 18, 2013.

45.   The lead attorney for Defendant in this action is Heidi Keefe.

46.   Heidi Keefe is an experienced and responsible attorney.

47.   Heidi Keefe is the lead attorney for Defendant in Civil Action No. CV-10-00499 MRP (FFMx) that involves U.S. Patent No. 7,644,122 ("the '122 patent), which is the parent of the '047 patent.

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48. Heidi Keefe is the lead attorney in U.S. Patent Office Reexamination Control No. 95/001411 in which Defendant has sought reexamination of the '122 patent.

49. As Defendant's lead attorney in the District Court action and reexamination involving the '122 patent, Heidi Keefe has a duty to Defendant to stay informed about the status of the '122 patent and any related patent applications, including the patent application that issued as the '047 patent.

50. The prosecution history of the '047 patent has been public since it was published on March 11, 2010.

51. On information and belief, as a responsible attorney, Heidi Keefe kept Defendant apprised of the status of the patent application for the '047 patent.

52. On information and belief, as a responsible attorney, Heidi Keefe was aware of the claims of the '047 patent that were allowed on June 21, 2013.

53. On information and belief, as a responsible attorney, Heidi Keefe informed Defendant of the issuance and claims of the '047 patent before the complaint in this action was filed.

54. Defendant had constructive and, on information and belief, actual notice of Plaintiff's patent rights prior to August 22, 2013, but Defendant willfully infringed and continues to willfully infringe Plaintiff's patent rights.

55. 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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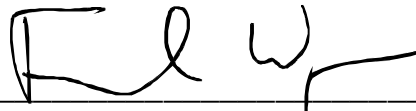
Amended Complaint

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 '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: November 1, 2013   By: _____

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