

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

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TLI COMMUNICATIONS LLC,	:	
	:	C.A. No. _____
Plaintiff,	:	
	:	
v.	:	
	:	JURY TRIAL DEMANDED
YAHOO! INC.	:	
	:	
and	:	
	:	
TUMBLR, INC.	:	
	:	
Defendants.	:	
-----X	:	

Complaint for Patent Infringement

Plaintiff TLI Communications LLC (“TLI”) files this Complaint for Patent Infringement (“Complaint”) against Yahoo! Inc. (“Yahoo”) and Tumblr, Inc. (“Tumblr”), wherein, pursuant to 35 U.S.C. §§ 271 and 281, Plaintiff seeks a judgment of infringement by Defendants of U.S. Patent No. 6,038,295 (the “295 Patent”) and damages resulting therefrom pursuant to 35 U.S.C. § 284, as well as preliminary and permanent injunction of the infringing activity pursuant to 35 U.S.C. § 283, and such other relief as the Court deems just and proper, and in support thereof alleges as follows:

The Parties

1. Plaintiff TLI is a Delaware limited liability company with its principal place of business at 3422 Old Capitol Trail, Suite 72, Wilmington, Delaware 19808.
2. On information and belief, Defendant Yahoo is a Delaware corporation with its headquarters at 701 First Avenue, Sunnyvale, California 94089. Yahoo has appointed The

Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801, as its agent for service of process.

3. On information and belief, Defendant Tumblr is a Delaware corporation with its headquarters at 35 East 21st Street, New York, New York 10010. Tumblr has appointed The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801, as its agent for service of process.

4. On information and belief, Yahoo acquired Tumblr in June 2013 and Tumblr is now a wholly owned subsidiary of Yahoo.

Jurisdiction and Venue

5. This is an action for patent infringement arising under the Patent Laws of the United States, Title 35 of the United States Code.

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because the action concerns infringement of a United States patent.

7. Upon information and belief, Yahoo conducts substantial business in Delaware, directly or through intermediaries, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct and/or deriving substantial revenue from goods and services provided to individuals in Delaware. Further, this Court has personal jurisdiction over Yahoo because it is incorporated in Delaware and has purposely availed itself of the privileges and benefits of the laws of the State of Delaware.

8. Upon information and belief, Tumblr conducts substantial business in this forum, directly or through intermediaries, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct and/or deriving substantial revenue from goods and services provided to individuals in

Delaware. Further, this Court has personal jurisdiction over Yahoo because it is incorporated in Delaware and has purposely availed itself of the privileges and benefits of the laws of the State of Delaware.

9. Venue is proper under 28 U.S.C. §§ 1391 and 1400.

The Patent-in-Suit

10. TLI is the owner of the '295 Patent entitled "Apparatus and Method for Recording, Communicating and Administering Digital Images," which the United States Patent & Trademark Office lawfully and duly issued on March 14, 2000. A true and correct copy of the '295 Patent is attached hereto as Exhibit A.

Factual Background

11. Dr. Heinz Mattes is the named inventor of the '295 patent.

12. The '295 patent claims priority to an application filed on June 17, 1996. The '295 patent was originally assigned to Siemens Aktiengesellschaft of Munich, Germany. TLI is the current owner of the '295 patent via assignment.

13. In the mid 1990's, Dr. Mattes, while working as a scientist for Siemens, recognized that mobile telephony and digital photography, each then in their infancy, would likely become more and more popular. Dr. Mattes recognized that mobile telephones could be integrated with digital cameras, resulting in a proliferation of the quantity of digital images that could and would be taken.

14. Dr. Mattes invented a revolutionary way of communicating and recording such digital images, which allowed numerous images to be simply and quickly recorded, tracked, accessed and transmitted.

15. In 1996, Dr. Mattes' invention was among the winners of a Siemens idea competition, leading to Siemens initiating a project to develop a cellular telephone with an integrated camera.

16. The '295's patented inventions are applicable to the uploading and organization of digital images from a telephone. Over the past few years, smart cellular telephones that incorporate sophisticated digital cameras have exploded in popularity, as has social media. Today, hundreds of millions of digital images are uploaded onto computer servers and social media websites every day, including onto Yahoo's Flickr and Tumblr. Yahoo's Flickr and Tumblr products use the '295's patented technology, without license or authority, to classify those images so that they can be easily uploaded, stored, organized, retrieved and shared.

Yahoo's Infringing Products

17. Yahoo provides web based products and services, including its Flickr product. Yahoo revenues are attributed to, among other things, display advertising and fee-based services.

18. Flickr was launched in 2004, more than seven years after the '295 patent's effective filing date. Yahoo acquired Flickr in 2005. Yahoo recently offered Flickr applications, especially designed for iPhone and Android mobile telephones, that allow telephone users to easily characterize and upload digital images to Yahoo servers.

19. In August 2011, Yahoo announced that Flickr was hosting over 6 billion digital images, stating that, "It's the ability to wander through the titles, tags, geotags, camera info, groups, comments, favs, and everything else associated with the photos that make the huge collection of photos on Flickr so unique."

20. In its 2012 Annual Report, Yahoo stated that "Flickr is an online photo management and sharing service that makes it easy for users to upload, store, organize, and share their photos." Yahoo also stated that "Yahoo! offers mobile applications for Flickr on both

iPhone and Android devices.” Yahoo also purports that a Flickr mobile application is available for Windows based phones, and that mobile telephones can also upload digital images to Flickr using m.flickr.com or via email.

21. So that these digital images could be uploaded, stored and organized, Yahoo had to develop products and processes that, on information and belief, employ TLI’s patented technology. The infringing products include, but are not limited to, the products and processes that Yahoo uses to upload, store and organize the digital images it receives from mobile telephones, including Yahoo Flickr and Tumblr (“Yahoo Infringing Products”). Discovery is expected to uncover the full extent of Yahoo’s unlawful use of TLI’s patented technology beyond these accused Infringing Products already identified through public information.

Tumblr’s Infringing Products

22. Tumblr provides web based products and services, including its microblogging and posting products. Tumblr revenues are attributed to, among other things, advertising and services.

23. Tumblr was launched in 2007, more than ten years after the ’295 patent’s effective filing date. Yahoo acquired Tumblr in 2013. Tumblr provides applications especially designed for Apple iPhones, Android-based mobile telephones and Windows-based mobile telephones that allow telephone users to easily characterize and upload digital images to Tumblr servers.

24. In 2013, Tumblr announced that it receives over 85 million posts per day and is hosting over 63 billion posts and 140 million blogs. Tumblr stated that, “Tumblr lets you effortlessly share anything. Post text, photos, quotes, links, music, and videos from your browser, phone, desktop, email or wherever you happen to be.” Tumblr also stated that users can “[e]xplore and share from anywhere with our slick mobile apps.”

25. Tumblr uploads, stores and organizes the millions of digital images that it receives from mobile telephones. To do so, Tumblr had to develop products and processes that, on information and belief, employ TLI's patented technology. The infringing products include, but are not limited to, the products and processes that Tumblr uses to upload, store and organize the digital images it receives from mobile telephones ("Tumblr Infringing Products"; collectively, with Yahoo's Infringing Products, "Infringing Products"). Discovery is expected to uncover the full extent of Tumblr's unlawful use of TLI's patented technology beyond these accused Infringing Products already identified through public information.

CLAIM FOR RELIEF (Infringement of the '295 Patent)

26. TLI incorporates by reference paragraphs 1 through 25 of the Complaint as if set forth here in full.

27. Upon information and belief, Yahoo has been and is currently directly infringing one or more claims of the '295 Patent by making, using, offering to sell, and/or selling within the United States, and/or importing into the United States, without authority, the Yahoo and Tumblr Infringing Products. For example, and without limitation, Yahoo has directly infringed and continues to directly infringe the '295 Patent in this judicial district and elsewhere in the United States. Yahoo's infringement includes, without limitation, (i) making and using the apparatus of claim 1 and claims dependent thereon, and (ii) practicing the method of claim 17 and claims dependent thereon.

28. Specifically, Yahoo's direct infringement includes, without limitation (i) its uploading of digital images from mobile telephones onto Yahoo servers via Flickr or Tumblr (or onto servers operated on or for Yahoo's behalf ("Yahoo servers")), (ii) its testing of its Flickr and Tumblr products by uploading images with mobile telephones onto Yahoo servers within the United States, and (iii) its maintaining Yahoo servers that categorize and store images that were

uploaded via mobile telephones. Yahoo also directs and/or controls its employees, executives, agents, customers and agents to use the Flickr and Tumblr products to upload images from mobile telephones onto Yahoo servers within the United States. Yahoo also directly infringes one or more claims of the '295 Patent by providing Flickr and Tumblr applications to mobile telephone users and thus putting the Infringing Products into use.

29. Upon information and belief, upon knowledge of the '295 Patent (at least since the filing date of this Complaint), Yahoo is contributing to the infringement of the '295 Patent by, among other things, knowingly and with intent, actively encouraging its customers, suppliers, agents and affiliates to make, use, sell and/or offer for sale the Infringing Products in a manner that constitutes infringement of one or more claims of the '295 Patent. There are no substantial uses of the Infringing Products that do not infringe one or more claims of the '295 Patent. Yahoo's Flickr mobile telephone applications and Tumblr mobile telephone applications that Yahoo provides to its customers, for example, have no substantial non-infringing use.

30. Upon information and belief, upon knowledge of the '295 Patent (at least since the filing date of this Complaint), Yahoo is inducing infringement of the '295 Patent by, among other things, knowingly and with intent, actively encouraging its customers, suppliers, agents and affiliates to make, use, sell and/or offer for sale Yahoo and Tumblr Infringing Products in a manner that constitutes infringement of one or more claims of the '295 Patent.

31. To the extent that Yahoo's customers can be considered to put the Infringing Products into use, then Yahoo would also be inducing infringement of the '295 Patent by, among other things, knowingly and with intent (at least since the filing date of this Complaint), actively encouraging its customers to make and use Yahoo's Flickr and Tumblr products in a manner that constitutes infringement of one or more claims of the '295 Patent.

32. As a result of Yahoo's unlawful infringement of the '295 Patent, TLI has suffered and will continue to suffer damage. TLI is entitled to recover from Yahoo the damages adequate to compensate for such infringement, which have yet to be determined.

33. Any further manufacturing, sales, offers for sale, uses, or importation by Yahoo of the Infringing Products will demonstrate a deliberate and conscious decision to infringe the '295 Patent or, at the very least, a reckless disregard of TLI's patent rights. If Yahoo continues to manufacture, use, offer to sell, sell, and/or import the Infringing Products following its notice of the '295 Patent claims, Yahoo's infringement will be willful and TLI will be entitled to treble damages and attorneys' fees and costs incurred in this action, along with prejudgment interest under 35 U.S.C. §§ 284, 285.

34. Yahoo will continue to infringe the '295 Patent unless and until it is enjoined by this Court.

35. Yahoo's acts of infringement have caused and will continue to cause irreparable harm to TLI unless and until Yahoo is enjoined by this Court.

36. Upon information and belief, Tumblr has been and is currently directly infringing one or more claims of the '295 Patent by making, using, offering to sell, and/or selling within the United States, and/or importing into the United States, without authority, the Tumblr Infringing Products. For example, and without limitation, Tumblr has directly infringed and continues to directly infringe the '295 Patent in this judicial district and elsewhere in the United States. Tumblr's infringement includes, without limitation, (i) making and using the apparatus of claim 1 and claims dependent thereon, and (ii) practicing the method of claim 17 and claims dependent thereon.

37. Specifically, Tumblr's direct infringement includes, without limitation (i) its uploading of digital images from mobile telephones onto Tumblr servers (or onto servers operated on or for Tumblr's behalf ("Tumblr servers")), (ii) its testing of its Tumblr products by uploading images with mobile telephones onto Tumblr servers within the United States, and (iii) its maintaining Tumblr servers that categorize and store images that were uploaded via mobile telephones. Tumblr also directs and/or controls its employees, executives, agents, customers and agents to use the Tumblr products to upload images from mobile telephones onto Tumblr servers within the United States. Tumblr also directly infringes one or more claims of the '295 Patent by providing Tumblr applications to mobile telephone users and thus putting the Tumblr Infringing Products into use.

38. Upon information and belief, upon knowledge of the '295 Patent (at least since the filing date of this Complaint), Tumblr is contributing to the infringement of the '295 Patent by, among other things, knowingly and with intent, actively encouraging its customers, suppliers, agents and affiliates to make, use, sell and/or offer for sale the Tumblr Infringing Products in a manner that constitutes infringement of one or more claims of the '295 Patent. There are no substantial uses of the Tumblr Infringing Products that do not infringe one or more claims of the '295 Patent. Tumblr's mobile telephone applications that Tumblr provides to its customers, for example, have no substantial non-infringing use.

39. Upon information and belief, upon knowledge of the '295 Patent (at least since the filing date of this Complaint), Tumblr is inducing infringement of the '295 Patent by, among other things, knowingly and with intent, actively encouraging its customers, suppliers, agents and affiliates to make, use, sell and/or offer for sale Tumblr Infringing Products in a manner that constitutes infringement of one or more claims of the '295 Patent.

40. To the extent that Tumblr's customers can be considered to put the Infringing Products into use, then Tumblr would also be inducing infringement of the '295 Patent by, among other things, knowingly and with intent (at least since the filing date of this Complaint), actively encouraging its customers to make and use Tumblr Infringing Products in a manner that constitutes infringement of one or more claims of the '295 Patent.

41. As a result of Tumblr's unlawful infringement of the '295 Patent, TLI has suffered and will continue to suffer damage. TLI is entitled to recover from Tumblr the damages adequate to compensate for such infringement, which have yet to be determined.

42. Any further manufacturing, sales, offers for sale, uses, or importation by Tumblr of the Tumblr Infringing Products will demonstrate a deliberate and conscious decision to infringe the '295 Patent or, at the very least, a reckless disregard of TLI's patent rights. If Tumblr continues to manufacture, use, offer to sell, sell, and/or import the Infringing Products following its notice of the '295 Patent claims, Tumblr's infringement will be willful and TLI will be entitled to treble damages and attorneys' fees and costs incurred in this action, along with prejudgment interest under 35 U.S.C. §§ 284, 285.

43. Tumblr will continue to infringe the '295 Patent unless and until it is enjoined by this Court.

44. Tumblr's acts of infringement have caused and will continue to cause irreparable harm to TLI unless and until Tumblr is enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, TLI prays for a Judgment in favor of TLI and against Defendants as follows:

- A. That Yahoo has directly infringed the '295 Patent;
- B. That Yahoo has indirectly infringed the '295 Patent;

C. That this case is “exceptional” within the meaning of 35 U.S.C. § 285 against Yahoo;

D. An order preliminarily and permanently enjoining Yahoo and its affiliates, subsidiaries, officers, directors, employees, agents, representatives, licensees, successors, assigns, and all those acting for them and on their behalf, or acting in concert with them directly or indirectly, from further acts of infringement of the '295 Patent;

E. A full accounting for and an award of damages to TLI for Yahoo’s infringement of the '295 Patent; including enhanced damages pursuant to 35 U.S.C. § 284, together with pre- and post-judgment interest;

F. That Tumblr has directly infringed the '295 Patent;

G. That Tumblr has indirectly infringed the '295 Patent;

H. That this case is “exceptional” within the meaning of 35 U.S.C. § 285 against Tumblr;

I. An order preliminarily and permanently enjoining Tumblr and its affiliates, subsidiaries, officers, directors, employees, agents, representatives, licensees, successors, assigns, and all those acting for them and on their behalf, or acting in concert with them directly or indirectly, from further acts of infringement of the '295 Patent;

J. A full accounting for and an award of damages to TLI for Tumblr’s infringement of the '295 Patent; including enhanced damages pursuant to 35 U.S.C. § 284, together with pre- and post-judgment interest;

K. An award of TLI’s reasonable attorneys’ fees, expenses, and costs; and

L. A grant of such other and further equitable or legal relief as this Court deems proper.

DEMAND FOR JURY TRIAL

TLI hereby demands trial by jury on all issues so triable.

Dated: November 18, 2013

Respectfully submitted,

FARNAN LLP

/s/ Brian E. Farnan

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