

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
(Alexandria Division)

2014 FEB 10 P 4: 16

TLI COMMUNICATIONS LLC,

Plaintiff,

v.

HALL AUTOMOTIVE, LLC,  
YAHOO! INC., and  
TUMBLR, INC.

Defendants.

CLERK US DISTRICT COURT  
ALEXANDRIA, VIRGINIA

Civil Action No.

1:14cv137  
TSE/IDD

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff TLI Communications LLC (“TLI”) files this Complaint for Patent Infringement against Hall Automotive, LLC (“Hall Automotive”), 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 Nos. 6,038,295 (the “295 Patent”), damages resulting therefrom pursuant to 35 U.S.C. § 284, as well as a 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 corporation with its principal place of business at 3422 Old Capitol Trail, Suite 72, Wilmington, Delaware 19808.
2. Defendant Hall Automotive, LLC is a limited liability company organized under the laws of the State of Virginia, with its principal place of business at 441 Viking Drive, Virginia Beach, Virginia 23452.

3. Defendant Yahoo is a Delaware corporation with its headquarters at 701 First Avenue, Sunnyvale, California 94089.

4. Defendant Tumblr is a Delaware corporation with its headquarters at 35 East 21st Street, New York, New York 10010. 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. This Court has personal jurisdiction over Hall Automotive because Hall Automotive is located in this district and it conducts substantial business in this district, directly or through intermediaries, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business in this district, engaging in other persistent courses of conduct in this district and/or deriving substantial revenue from goods and services provided to individuals in this district. Further, this Court has personal jurisdiction over Hall Automotive because it is a Virginia limited liability company and it has purposely availed itself of the privileges and benefits of the laws of the State of Virginia.

8. Venue is proper in this judicial district as to Hall Automotive pursuant to 28 U.S.C. §§ 1391 and 1400(b) because, among other reasons, Hall Automotive is subject to personal jurisdiction in this district, Hall Automotive is located in this district, Hall Automotive has facilities and employees in this district, and Hall Automotive has committed and continues to commit acts of patent infringement in this district. For example, Hall Automotive uses

infringing products and services in this district. Moreover, to the extent any patent claim is construed to require a system, Hall Automotive places that system into use in this district.

9. This Court has personal jurisdiction over Yahoo because Yahoo conducts substantial business in this district, directly or through intermediaries, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business in this district, engaging in other persistent courses of conduct in this district, deriving substantial revenue from goods and services provided to individuals in this district, maintaining continuous and systematic contacts with this district, and/or purposely availing itself of the privileges of doing business in Virginia.

10. Venue is proper in this judicial district as to Yahoo pursuant to 28 U.S.C. §§ 1391 and 1400(b) because, among other reasons, Yahoo is subject to personal jurisdiction in this district and Yahoo has committed and continues to commit acts of patent infringement in this district. For example, Yahoo has used, sold, offered for sale, and/or imported infringing products and services in this district. Yahoo, for example, provides infringing web pages and software in this district, and thus directly infringes the '295 Patent in this district, and, to the extent any claim is construed to require a system, (i) Yahoo puts that system into use in this district by providing infringing web pages and software in this district, and thus directly infringes the '295 Patent in this district and elsewhere, (ii) Yahoo provides key components of the system to its users, including to Hall Automotive, in this district and thus contributorily infringes the '295 Patent in this district and elsewhere, and/or (iii) Yahoo induces its users, including Hall Automotive, to use the system and to put the system into use, and thus induces infringement of the '295 Patent in this district and elsewhere.

11. This Court has personal jurisdiction over Tumblr because Tumblr conducts substantial business in this district, directly or through intermediaries, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business in this district, engaging in other persistent courses of conduct in this district, deriving substantial revenue from goods and services provided to individuals in this district, maintaining continuous and systematic contacts with this district, and/or purposely availing itself of the privileges of doing business in Virginia.

12. Venue is proper in this judicial district as to Tumblr pursuant to 28 U.S.C. §§ 1391 and 1400(b) because, among other reasons, Tumblr is subject to personal jurisdiction in this district and Tumblr has committed and continues to commit acts of patent infringement in this district. For example, Tumblr has used, sold, offered for sale, and/or imported infringing products and services in this district. Tumblr, for example, provides infringing web pages and software in this district, and thus directly infringes the '295 Patent in this district, and, to the extent any claim is construed to require a system, (i) Tumblr puts that system into use in this district by providing infringing web pages and software in this district, and thus directly infringes the '295 Patent in this district and elsewhere, (ii) Tumblr provides key components of the system to its users in this district and thus contributorily infringes the '295 Patent in this district and elsewhere, and/or (iii) Tumblr induces its users, including Hall Automotive, to use the system and to put the system into use, and thus induces infringement of the '295 Patent in this district and elsewhere.

13. Joinder is proper under 35 U.S.C. § 299 because, and as explained further below, Hall Automotive and Yahoo are jointly and severally liable for infringement arising out of the same series of transactions or occurrences related to the use of the same infringing platform, and

because Yahoo owns and controls Tumblr. Questions and facts common to all defendants will arise in the action.

### **The Patent-in-Suit**

14. 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**

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

16. The '295 patent has a priority date of 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.

17. 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.

18. 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.

19. 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.

20. 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 and Yahoo's Tumblr. Yahoo's and Tumblr's 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**

21. Yahoo owns and operates widely used social networking services that are accessible, for example, on the World Wide Web, including [www.yahoo.com](http://www.yahoo.com), [www.flickr.com](http://www.flickr.com), [m.flickr.com](http://m.flickr.com) and [www.tumblr.com](http://www.tumblr.com). Yahoo's revenues are attributed to, among other things, display advertising and fee-based services.

22. Flickr was launched in 2004, more than seven years after the '295 patent's effective filing date. Yahoo acquired Flickr in 2005. 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."<sup>1</sup>

23. Yahoo offers websites, software and downloadable applications, especially designed for mobile devices having telephones, including iPhone and Android mobile telephones, and other mobile telephone platforms, which allow telephone users to easily characterize and upload digital images to Yahoo servers. Yahoo user can directly access yahoo websites from many mobile telephones, including [www.flickr.com](http://www.flickr.com) and [m.flickr.com](http://m.flickr.com), which

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<sup>1</sup> <http://blog.flickr.net/en/2011/08/04/6000000000/>.

upload digital images characterized with user-information. As of August, 29, 2013, Yahoo purported that the iPhone 5 was “the most popular camera on Flickr.”<sup>2</sup> In addition, Yahoo provides downloadable applications, which also provide for uploading digital images to Yahoo servers. Yahoo entices its users to upload digital images by providing easy-to-use platforms and instructions, and Yahoo stores and archives the digital images uploaded to its servers using the characterization information provided by its users. As a result, visitors are attracted to Yahoo where they can easily view, retrieve and share those images, resulting in more visitors to Yahoo, and increased Yahoo revenues.

24. So that these digital images could be captured, uploaded, stored and organized, Yahoo fashioned products and processes that employ TLI’s patented technology. The infringing products include, but are not limited to, the products and processes that Yahoo uses to capture, upload, store and organize the digital images it receives from mobile devices having telephones, including via Flickr and Tumblr.

#### **Tumblr’s Infringing Products**

25. Tumblr operates widely used social networking services that are accessible, for example, on the World Wide Web, including [www.tumblr.com](http://www.tumblr.com). Tumblr’s revenues are attributed to, among other things, display advertising and fee-based services.

26. Tumblr was launched in 2007, more than ten years after the ’295 patent’s effective filing date. Yahoo acquired Tumblr in 2013.

27. 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

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<sup>2</sup> <http://yahoo.tumblr.com/post/59676788582/making-your-photos-even-more-beautiful-flickr-for>.

browser, phone, desktop, email or wherever you happen to be.”<sup>3</sup> Tumblr also stated that users can “[e]xplore and share from anywhere with our slick mobile apps.”<sup>4</sup>

28. Tumblr offers websites, software and downloadable applications, especially designed for mobile devices having telephones, including iPhone and Android mobile telephones, and other mobile telephone platforms, which allow telephone users to easily characterize and upload digital images to Yahoo and/or Tumblr servers. Tumblr users can directly access Tumblr websites from many mobile telephones, including [www.tumblr.com](http://www.tumblr.com), which uploads digital images characterized with user-information. In addition, Tumblr provides downloadable applications, which also provide for uploading digital images to Yahoo and/or Tumblr servers. Tumblr entices its users to upload digital images by providing easy-to-use platforms and instructions, and Yahoo and/or Tumblr store and archive the digital images uploaded to its servers using the characterization information provided by its users. As a result, visitors are attracted to Tumblr where they can easily view, retrieve and share those images, resulting in more visitors to Tumblr, and increased Tumblr revenues.

29. So that these digital images could be captured, uploaded, stored and organized, Tumblr fashioned products and processes that employ TLI’s patented technology. The infringing products include, but are not limited to, the products and processes that Tumblr uses to capture, upload, store and organize the digital images it receives from mobile devices having telephones, including via Flickr and Tumblr.

#### **Hall Automotive’s Infringing Products**

30. Hall Automotive uses Yahoo to market its services and products.<sup>5</sup> Hall Automotive’s customers can access Yahoo directly, for example, at [www.flickr.com](http://www.flickr.com), including

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<sup>3</sup> <http://www.tumblr.com/about>.

<sup>4</sup> <http://www.tumblr.com/apps>.



access to the digital images that Yahoo uploaded, archived and characterized on Hall Automotive's behalf.

31. Hall Automotive captures digital images on mobile devices having telephones and it uploads those images to databases where those images are archive and stored, including to Yahoo's databases.<sup>6</sup> Those images are uniquely identified and characterized by Hall Automotive, or persons acting on Hall Automotive's behalf, and can be easily accessed on the databases using those identifiers and characterizations. Such actions of uploading digital images from mobile devices having telephones infringe one or more claims of the '295 Patent.

### **CLAIM FOR RELIEF**

#### **COUNT I**

(Yahoo's Infringement of the '295 Patent)

32. TLI incorporates by reference paragraphs 1 through 31 of the Complaint as if set forth here in full.

#### **Direct Infringement**

33. 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 aforementioned platforms that upload and store digital images from mobile devices having telephones. 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.

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<sup>5</sup> See, e.g., <http://www.flickr.com/photos/hallautomotive/>.

<sup>6</sup> *Id.*

34. Specifically, Yahoo's direct infringement includes, without limitation (i) its uploading of digital images from mobile devices having telephones onto Yahoo and/or Tumblr servers (or onto servers operated on or for Yahoo's behalf ("Yahoo servers")), (ii) its testing of its Yahoo products by uploading images from mobile devices having telephones onto Yahoo servers within the United States, and (iii) its maintaining Yahoo servers that categorize and store images that were uploaded via mobile devices having telephones. Yahoo also directs and/or controls its employees, executives, customers and agents to use the aforementioned digital image uploading platforms to upload images from mobile devices having telephones onto Yahoo servers within the United States.

35. To the extent that claim 1 of the '295 Patent is construed to require a system with a claim element not practiced by Yahoo, Yahoo would also directly infringe claim 1 at least because it directs and/or controls the practicing of all claim elements or because it places the invention into service. For example, Yahoo provides websites, platforms and software to mobile telephone users that provide and enable image uploading, thereby putting the invention into service.<sup>7</sup> Moreover, Yahoo directs and/or controls the practicing of all claim elements, as shown for example, by Yahoo entering into contracts with its users, Yahoo instructing its users how to

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<sup>7</sup> See, for example, <https://www.flickr.com/help/photos/#16> ("The easiest way to upload to Flickr is to use our Web Uploadr. For quick access we have added an "Upload" link to the navigation at the top of every Flickr page. If you want to upload from your smartphone, you can use one of our Apps for the iPhone, Android, or Windows Phone, or check out the mobile version of Flickr, [m.flickr.com](http://m.flickr.com)."); <http://www.theverge.com/2013/10/9/4819396/flickr-ios-7-automatic-iphone-photo-uploads> ("Yahoo is updating its iOS 7 Flickr application today [October 9, 2013] to let iPhone users automatically upload photos to the service."); <http://yahoo.tumblr.com/post/63555995239/introducing-auto-upload-and-auto-straightening-for> ("Up until now, you've had to upload photos from your iPhone or iPod manually. That can be a really painful and time-consuming process. We're introducing Auto Upload for iOS 7 users to automatically save your photos to Flickr, securely and privately, until you're ready to edit and share them. With Auto Upload, you can always find your smartphone photos wherever you want — within the Flickr app and on Flickr.com.").

upload digital images from mobile devices having telephones, Yahoo automatically syncing digital images from mobile devices having telephones onto its servers, Yahoo automatically uploading digital images from mobile devices having telephones onto its servers, Yahoo automatically tagging digital images that it uploads onto its servers from mobile devices having telephones with characterization information of the users, and Yahoo automatically archiving the digital images that it uploads onto its servers with characterization information of the users.

36. To the extent that claim 17 of the '295 Patent is construed to require a method with a step not practiced by Yahoo, Yahoo would also directly infringe claim 17 at least because it directs and/or controls the practicing of all claimed steps. Yahoo directs and/or controls the practicing of all claim elements, as shown for example, by Yahoo entering into contracts with its users, Yahoo instructing its users how to upload digital images from mobile devices having telephones, Yahoo automatically syncing digital images from mobile devices having telephones onto its servers, Yahoo automatically uploading digital images from mobile devices having telephones onto its servers, Yahoo automatically tagging digital images that it uploads onto its servers from mobile devices having telephones with characterization information of the users, and Yahoo automatically archiving the digital images that it uploads onto its servers with characterization information of the users.

37. At least as a result of the computer software and hardware that performs these activities, Yahoo is liable for literal direct infringement of the '295 Patent pursuant to 35 U.S.C. § 271(a).

38. To the extent that any fact finder deems any of the elements of the '295 patent claims not literally satisfied by the structure or use of the Yahoo platform, these elements are satisfied under the doctrine of equivalents.

**Indirect Infringement**

39. Alternatively, and in addition to its liability for direct infringement of the '295 Patent, Yahoo is also liable for indirectly infringing the '295 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).

40. Yahoo has been aware of the '295 Patent since at least November 20, 2013, when it was served with a complaint in an action filed on November 18, 2013. The November 18, 2013 complaint is herein incorporated by reference.

41. Upon Yahoo's gaining knowledge of the '295 patent, it was, or became, apparent to Yahoo that the operation of its digital image uploading platforms and software resulted in infringement of the '295 Patent. Yahoo 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 result in infringement of the '295 Patent.

42. The direct infringement induced and contributed to by Yahoo includes at least the uploading of digital images from mobile devices having telephones to Yahoo servers by end users acting alone or in combination with Yahoo. For example, and without limitation, to the extent that claim 1 is construed to require a system with the system placed into service by a user who uploads digital images from a mobile device having a telephone (and it is determined that Yahoo does not direct and/or control that user), the user would be considered to be a direct infringer of claim 1. Yahoo knows that these users are infringing the '295 Patent and Yahoo has specific intent to encourage the users to infringe the '295 Patent. As another example, to the extent that claim 17 is construed to require a method with steps performed by one or more entities other than Yahoo, for example, a user (and it is determined that Yahoo does not direct

and/or control these entities), Yahoo induces those entities to perform those infringing acts, knowing that the acts constitute infringement of the '295 Patent and with specific intent to encourage those acts and encourage infringement.

43. Yahoo encourages direct infringement of the '295 Patent at least by widely publicizing its social network, by providing image-uploading tools via its website, by providing image-uploading software, by providing pre-loaded image uploading software on mobile devices having telephones, by automatically syncing images from mobile devices having telephones, by automatically tagging images uploaded from mobile devices having telephones, by automatically characterizing images with user information when uploaded from mobile devices having telephones, by providing image storage, by storing images uploaded from mobile devices having telephones according to user-characterization information, by providing image-uploading, downloadable applications for mobile devices having telephones, and by providing instructions for conducting the directly infringing use of uploading digital images from mobile devices.<sup>8</sup>

44. Yahoo induces infringement at least by encouraging, facilitating and instructing users to use the '295 Patent's inventions by uploading digital images to Yahoo servers from mobile devices having telephones. Yahoo does this by providing image uploading software and platforms (including pre-loaded, downloadable and/or directly accessible via Yahoo websites software and platforms) to its users, and by instructing its users how to upload images to Yahoo servers, thereby inducing the use of the claimed inventions.

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<sup>8</sup> *See, for example*, <https://www.flickr.com/help/photos/#16> ("The easiest way to upload to Flickr is to use our Web Uploadr. For quick access we have added an "Upload" link to the navigation at the top of every Flickr page. If you want to upload from your smartphone, you can use one of our Apps for the iPhone, Android, or Windows Phone, or check out the mobile version of Flickr, [m.flickr.com](http://m.flickr.com).").

45. Yahoo is inducing infringement of the '295 Patent by, among other things, knowingly and with specific intent, actively encouraging its customers, suppliers, agents and affiliates to make, use, sell and/or offer for sale the aforementioned Yahoo image uploading platforms in a manner that constitutes infringement of one or more claims of the '295 Patent, knowing that such activities infringe at least one claim of the '295 Patent, and with the knowledge and specific intent to encourage, direct and facilitate those infringing activities, including through the creation and dissemination of promotional and marketing materials, instructional materials, product materials and technical materials.

46. By inducing its customers', suppliers', users', agents' and affiliates' use of the methods claimed in the '295 Patent and their making and/or using the aforementioned Yahoo image uploading platforms, Yahoo has been and is now indirectly infringing under 35 U.S.C. § 271(b) one or more claims of the '295 Patent, either literally or under the doctrine of equivalents.

47. Yahoo contributes to the '295 Patent's direct infringement by, among other things, knowingly and with specific intent, actively encouraging its customers, suppliers, agents, users and affiliates to make, use, sell and/or offer for sale Yahoo's aforementioned image uploading platforms and services that constitutes infringement of at least claims 1 and 17 of the '295 Patent. For example, to the extent that any claim is construed to require a system, Yahoo provides components, including image-uploading, pre-loaded software, websites and/or downloadable applications, for use in systems, which facilitate the uploading of digital images from mobile devices having telephones. Yahoo knows that such products constitute a material part of the inventions of the '295 Patent, knows those products to be especially made or adapted to infringe the '295 Patent, and knows that those products are not staple articles or commodities

of commerce suitable for substantial non-infringing use. Yahoo knows that by providing such components to its customers, its customers will infringe at least one claim of the '295 Patent, and Yahoo knows that its customers do infringe the '295 Patent. Yahoo image uploading software has no substantial non-infringing uses.

48. By contributing to its customers', suppliers', agents', users' and affiliates' use of the methods claimed in the '295 Patent and their making and/or using the aforementioned Yahoo image uploading platforms, Yahoo has been and is now indirectly infringing under 35 U.S.C. § 271(c) one or more claims of the '295 Patent, either literally or under the doctrine of equivalents.

#### **271(f) Infringement**

49. Yahoo is liable for infringement under 35 U.S.C. § 271(f) when the end user is outside the United States by supplying its software components for combination outside the United States.

#### **Joint Infringement**

50. Alternatively, the actions alleged above establish joint infringement of at least claims 1 and 17 by Yahoo and its customers, users, suppliers, agents and affiliates for which they should be found jointly and severally liable.

#### **Remedy for Yahoo's Infringement**

51. 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.

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

53. 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.

## COUNT II

(Tumblr's Infringement of the '295 Patent)

54. TLI incorporates by reference paragraphs 1 through 31 of the Complaint as if set forth here in full.

### Direct Infringement

55. 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 aforementioned platforms that upload and store digital images from mobile devices having telephones. 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.

56. Specifically, Tumblr's direct infringement includes, without limitation (i) its uploading of digital images from mobile devices having telephones onto Tumblr and/or Yahoo servers (or onto servers operated on or for Tumblr's behalf ("Tumblr servers")), (ii) its testing of its Tumblr products by uploading images from mobile devices having telephones onto Tumblr servers within the United States, and (iii) its maintaining Tumblr servers that categorize and store images that were uploaded via mobile devices having telephones. Tumblr also directs and/or controls its employees, executives, agents, customers and agents to use the aforementioned



digital image uploading platforms to upload images from mobile devices having telephones onto Tumblr servers within the United States.

57. To the extent that claim 1 of the '295 Patent is construed to require a system with a claim element not practiced by Tumblr, Tumblr would also directly infringe claim 1 at least because it directs and/or controls the practicing of all claim elements or because it places the invention into service. For example, Tumblr provides websites, platforms and software to mobile telephone users that provide and enable image uploading, thereby putting the invention into service. Moreover, Tumblr directs and/or controls the practicing of all claim elements, as shown for example, by Tumblr entering into contracts with its users, Tumblr instructing its users how to upload digital images from mobile devices having telephones, Tumblr automatically syncing digital images from mobile devices having telephones onto its servers, Tumblr automatically uploading digital images from mobile devices having telephones onto its servers, Tumblr automatically tagging digital images that it uploads onto its servers from mobile devices having telephones with characterization information of the users, and Tumblr automatically archiving the digital images that it uploads onto its servers with characterization information of the users.

58. To the extent that claim 17 of the '295 Patent is construed to require a method with a step not practiced by Tumblr, Tumblr would also directly infringe claim 17 at least because it directs and/or controls the practicing of all claimed steps. Tumblr directs and/or controls the practicing of all claim elements, as shown for example, by Tumblr entering into contracts with its users, Tumblr instructing its users how to upload digital images from mobile devices having telephones, Tumblr automatically syncing digital images from mobile devices having telephones onto its servers, Tumblr automatically uploading digital images from mobile

devices having telephones onto its servers, Tumblr automatically tagging digital images that it uploads onto its servers from mobile devices having telephones with characterization information of the users, and Tumblr automatically archiving the digital images that it uploads onto its servers with characterization information of the users.

59. At least as a result of the computer software and hardware that performs these activities, Tumblr is liable for literal direct infringement of the '295 Patent pursuant to 35 U.S.C. § 271(a).

60. To the extent that any fact finder deems any of the elements of the '295 patent claims not literally satisfied by the structure or use of the Tumblr platform, these elements are satisfied under the doctrine of equivalents.

#### **Indirect Infringement**

61. Alternatively, and in addition to its liability for direct infringement of the '295 Patent, Tumblr is also liable for indirectly infringing the '295 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).

62. Tumblr has been aware of the '295 Patent since at least November 20, 2013, when it was served with a complaint in an action filed on November 18, 2013. The November 18, 2013 complaint is herein incorporated by reference.

63. Upon Tumblr's gaining knowledge of the '295 patent, it was, or became, apparent to Tumblr that the operation of its digital image uploading platforms and software resulted in infringement of the '295 Patent. Tumblr 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 result in infringement of the '295 Patent.

64. The direct infringement induced and contributed to by Tumblr includes at least the uploading of digital images from mobile devices having telephones to Tumblr servers by end users acting alone or in combination with Tumblr. For example, and without limitation, to the extent that claim 1 is construed to require a system with the system placed into service by a user who uploads digital images from a mobile device having a telephone (and it is determined that Tumblr does not direct and/or control that user), the user would be considered to be a direct infringer of claim 1. Tumblr knows that these users are infringing the '295 Patent and Tumblr has specific intent to encourage the users to infringe the '295 Patent. As another example, to the extent that claim 17 is construed to require a method with steps performed by one or more entities other than Tumblr, for example, a user (and it is determined that Tumblr does not direct and/or control these entities), Tumblr induces those entities to perform those infringing acts, knowing that the acts constitute infringement of the '295 Patent and with specific intent to encourage those acts and encourage infringement.

65. Tumblr encourages direct infringement of the '295 Patent at least by widely publicizing its social network, by providing image-uploading tools via its website, by providing image-uploading software, by providing pre-loaded image uploading software on mobile devices having telephones, by automatically syncing images from mobile devices having telephones, by automatically tagging images uploaded from mobile devices having telephones, by automatically characterizing images with user information when uploaded from mobile devices having telephones, by providing image storage, by storing images uploaded from mobile devices having telephones according to user-characterization information, by providing image-uploading,

downloadable applications for mobile devices having telephones, and by providing instructions for conducting the directly infringing use of uploading digital images from mobile devices.<sup>9</sup>

66. Tumblr induces infringement at least by encouraging, facilitating and instructing users to use the '295 Patent's inventions by uploading digital images to Tumblr servers from mobile devices having telephones. Tumblr does this by providing image uploading software and platforms (including pre-loaded, downloadable and/or directly accessible via Tumblr websites software and platforms) to its users, and by instructing its users how to upload images to Tumblr servers, thereby inducing the use of the claimed inventions.

67. Tumblr is inducing infringement of the '295 Patent by, among other things, knowingly and with specific intent, actively encouraging its customers, suppliers, agents and affiliates to make, use, sell and/or offer for sale the aforementioned Tumblr image uploading platforms in a manner that constitutes infringement of one or more claims of the '295 Patent, knowing that such activities infringe at least one claim of the '295 Patent, and with the knowledge and specific intent to encourage, direct and facilitate those infringing activities, including through the creation and dissemination of promotional and marketing materials, instructional materials, product materials and technical materials.

68. By inducing its customers', suppliers', users', agents' and affiliates' use of the methods claimed in the '295 Patent and their making and/or using the aforementioned Tumblr image uploading platforms, Tumblr has been and is now indirectly infringing under 35 U.S.C. § 271(b) one or more claims of the '295 Patent, either literally or under the doctrine of equivalents.

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<sup>9</sup> See, for example, [http://www.tumblr.com/docs/en/photo\\_troubleshooting](http://www.tumblr.com/docs/en/photo_troubleshooting).

69. Tumblr contributes to the '295 Patent's direct infringement by, among other things, knowingly and with specific intent, actively encouraging its customers, suppliers, agents, users and affiliates to make, use, sell and/or offer for sale Tumblr's aforementioned image uploading platforms and services that constitutes infringement of at least claims 1 and 17 of the '295 Patent. For example, to the extent that any claim is construed to require a system, Tumblr provides components, including image-uploading, pre-loaded software, websites and/or downloadable applications, for use in systems, which facilitate the uploading of digital images from mobile devices having telephones. Tumblr knows that such products constitute a material part of the inventions of the '295 Patent, knows those products to be especially made or adapted to infringe the '295 Patent, and knows that those products are not staple articles or commodities of commerce suitable for substantial non-infringing use. Tumblr knows that by providing such components to its customers, its customers will infringe at least one claim of the '295 Patent, and Tumblr knows that its customers do infringe the '295 Patent. Tumblr image uploading software has no substantial non-infringing uses.

70. By contributing to its customers', suppliers', agents', users' and affiliates' use of the methods claimed in the '295 Patent and their making and/or using the aforementioned Tumblr image uploading platforms, Tumblr has been and is now indirectly infringing under 35 U.S.C. § 271(c) one or more claims of the '295 Patent, either literally or under the doctrine of equivalents.

#### **271(f) Infringement**

71. Tumblr is liable for infringement under 35 U.S.C. § 271(f) when the end user is outside the United States by supplying its software components for combination outside the United States.

**Joint Infringement**

72. Alternatively, the actions alleged above establish joint infringement of at least claims 1 and 17 by Tumblr and its customers, users, suppliers, agents and affiliates for which they should be found jointly and severally liable.

**Remedy for Tumblr's Infringement**

73. 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.

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

75. 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.

**COUNT III**

(Hall Automotive's Infringement of the '295 Patent and Yahoo's Joint and Several Liability  
Based on Same Transaction or Occurrences)

76. TLI incorporates by reference paragraphs 1 through 50 of the Complaint as if set forth here in full.

**Direct Infringement**

77. Hall Automotive has been and is currently directly infringing one or more claims of the '295 Patent at least by using within the United States, without authority, the aforementioned platforms that upload and store digital images from mobile devices having telephones. For example, and without limitation, Hall Automotive has directly infringed and continues to directly infringe the '295 Patent in this judicial district and elsewhere in the United States. Hall Automotive's infringement includes, without limitation, (i) using the apparatus of

claim 1 and claims dependent thereon, and (ii) practicing the method of claim 17 and claims dependent thereon.

78. Specifically, Hall Automotive's direct infringement includes, without limitation (i) its uploading of digital images from mobile devices having telephones onto Yahoo servers within the United States. Hall Automotive also directs and/or controls its employees, executives, agents, customers and agents to use the aforementioned digital image uploading platforms to upload images from mobile devices having telephones onto Yahoo servers within the United States.

79. For example, and without limitation, to the extent that claim 1 is construed to require a system with a user placing that system into use by uploading digital images from a mobile device having a telephone onto servers, Hall Automotive also directly infringes claim 1 of the '295 Patent by putting the invention into use, for example by downloading software and/or downloadable applications on mobile devices having telephones, and uploading digital images from mobile devices having telephones to Yahoo servers within the United States. As explained above, Yahoo would also be jointly and severally liable for Hall Automotive's direct infringement for inducing and contributing to this direct infringement.

80. At least as a result of uploading digital images from mobile devices onto Yahoo servers, which automatically archive those images using identification information and characterization information of the user, Hall Automotive is liable for literal direct infringement of the '295 Patent pursuant to 35 U.S.C. § 271(a).

81. To the extent that any fact finder deems any of the elements of the '295 patent claims not literally satisfied by Hall Automotive's uploading digital images from mobile devices onto Yahoo servers, these elements are satisfied under the doctrine of equivalents.

**Joint Infringement**

82. Alternatively, the actions alleged above establish joint infringement of at least claims 1 and 17 by Yahoo and Hall Automotive for which they should be found jointly and severally liable.

**Remedy for Hall Automotive's Infringement**

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

84. Hall Automotive will continue to infringe the '295 Patent unless and until it is enjoined by this Court.

85. Hall Automotive's acts of infringement have caused and will continue to cause irreparable harm to TLI unless and until Hall Automotive 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 Defendants have directly infringed the '295 Patent;
- B. That Yahoo and Tumblr have indirectly infringed the '295 Patent;
- C. That Yahoo and its customers, users, suppliers, agents and affiliates have jointly infringed the '295 Patent;
- D. That Tumblr and its customers, users, suppliers, agents and affiliates have jointly infringed the '295 Patent;
- E. That Yahoo and Hall Automotive have jointly infringed the '295 Patent;



F. Preliminarily and permanently enjoining Defendants and their 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;

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

H. That this case is "exceptional" within the meaning of 35 U.S.C. § 285;

I. An award of TLI's reasonable attorneys' fees, expenses, and costs; and

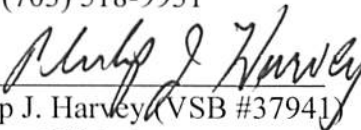
J. A grant of such other and further equitable or legal relief as this Court deems proper.

#### DEMAND FOR JURY TRIAL

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

Dated: February 10, 2014

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