

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

	-----X	
TLI COMMUNICATIONS LLC,	:	
	:	C.A. No. 13-1925 (GMS)
<b>Plaintiff,</b>	:	
	:	
v.	:	
	:	JURY TRIAL DEMANDED
IAC/INTERACTIVECORP,	:	
	:	
CITYGRID MEDIA, LLC,	:	
	:	
and	:	
	:	
VIMEO, LLC	:	
	:	
<b>Defendants.</b>	:	
	-----X	

**First Amended Complaint for Patent Infringement**

Plaintiff TLI Communications LLC (“TLI”) files this First Amended Complaint for Patent Infringement against IAC/InteractiveCorp (“IAC”), CityGrid Media, LLC (“CityGrid”), and Vimeo, LLC (“Vimeo”) (collectively “Defendants”), 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 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 company with its principal place of business at 3422 Old Capitol Trail, Suite 72, Wilmington, Delaware 19808.

2. Defendant IAC is a corporation organized under the laws of the state of Delaware, with a place of business located at 555 West 18th Street, New York, NY 10011.

3. Defendant Vimeo is a subsidiary of IAC and is a limited liability company organized under the laws of the state of Delaware, with a place of business located at 555 West 18th Street, New York, NY 10011.

4. Defendant CityGrid is a subsidiary of IAC and is a limited liability company organized under the laws of the state of Delaware, with a place of business located at 8833 Sunset Blvd., West Hollywood, California 90069.

### **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, each Defendant 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 each Defendant because each is incorporated in Delaware and it has purposely availed itself of the privileges and benefits of the laws of the State of Delaware.

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

### **Joinder**

9. Defendants Vimeo and City Grid are each owned directly or indirectly by Defendant IAC.

10. Defendants are in the business of providing, among other things, Internet related services via websites including urbanspoon.com and vimeo.com. Defendants collectively offer customers the ability to upload images to Defendants' web servers. As explained in more detail below, Defendants collectively operate their web servers in a manner that infringes the '295 Patent, by archiving and storing digital images received from cellular telephones.

11. Defendants are properly joined under 35 U.S.C. §299(a)(1) because a right to relief is asserted against the parties jointly, severally, and in the alternative with respect to the same transactions, occurrences, or series of transactions or occurrences relating to the making, using, importing into the United States, offering for sale, and/or selling the same accused products, namely the operation of Defendants' web servers.

12. Defendants are properly joined under 35 U.S.C. §299(a)(2). Questions of fact will arise that are common to all Defendants, including for example, whether Defendants' products have features that meet the features of one or more claims of the '295 Patent, the operation and maintenance of Defendants' servers, attributed revenues, advertising revenues, and what reasonable royalty will be adequate to compensate TLI for Defendants' infringement of the '295 Patent.

13. At least one right to relief is asserted against Defendants jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences related to the making, using, importing into the United States, offering for sale, or selling of the same accused product and/or process.

#### **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 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.

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 from smart cellular telephones, including onto [www.vimeo.com](http://www.vimeo.com), [www.vimeo.com/m](http://www.vimeo.com/m), [www.urbanspoon.com](http://www.urbanspoon.com) and [www.urbanspoon.com/m](http://www.urbanspoon.com/m). Defendants' 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.

### **Vimeo's Infringing Products**

21. Vimeo owns and operates widely used image hosting services and products that are accessible, for example, on the World Wide Web, including at [www.vimeo.com](http://www.vimeo.com) and [vimeo.com/m](http://vimeo.com/m). Vimeo's revenues are attributed to, among other things, display advertising, subscription and fee-based services.

22. Vimeo purports that, in January 2012, mobile devices "ma[de] up approximately 15 percent of [its] site traffic" and that "people use their mobile devices not only to watch video but to shoot and then upload video to share online."<sup>1</sup>

23. Vimeo 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 Vimeo servers. On information and belief, Vimeo's website can be directly accessed from many mobile telephones, which also uploads digital images characterized with user-information. In addition, Vimeo provides downloadable applications, which also provide for uploading digital images to Vimeo servers. Vimeo entices its users to upload digital images by providing easy-to-use platforms and instructions, and Vimeo 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 Vimeo where they can easily view, retrieve and share those images, resulting in more visitors to Vimeo, and increased Vimeo revenues.

---

<sup>1</sup> Vimeo Jan. 9, 2012 press release, available at <http://vimeo.com/about/press>.

24. So that these digital images could be captured, uploaded, stored and organized, Vimeo fashioned 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 Vimeo uses to capture, upload, store and organize the digital images it receives from mobile devices having telephones, including via [www.vimeo.com](http://www.vimeo.com). Discovery is expected to uncover the full extent of Vimeo's unlawful use of TLI's patented technology beyond these accused infringing products already identified through public information.

### **CityGrid's Infringing Products**

25. CityGrid provides web based products and services, including [www.urbanspoon.com](http://www.urbanspoon.com) and [www.urbanspoon.com/m](http://www.urbanspoon.com/m), an online restaurant guide that incorporates image uploading products. CityGrid's revenues are attributed to, among other things, display advertising, subscription and fee-based services.

26. CityGrid 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 CityGrid servers. On information and belief, CityGrid's website can be directly accessed from many mobile telephones, which also uploads digital images characterized with user-information. In addition, CityGrid provides downloadable applications, which also provide for uploading digital images to CityGrid servers. CityGrid entices its users to upload digital images by providing easy-to-use platforms and instructions, and CityGrid 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 CityGrid where they can easily view, retrieve and share those images, resulting in more visitors to CityGrid, and increased CityGrid revenues.

27. So that these digital images could be captured, uploaded, stored and organized, CityGrid fashioned 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 CityGrid uses to capture, upload, store and organize the digital images it receives from mobile devices having telephones, including via www.urbanspoon.com and m.urbanspoon.com. Discovery is expected to uncover the full extent of CityGrid's unlawful use of TLI's patented technology beyond these accused infringing products already identified through public information.

### **CLAIM FOR RELIEF**

#### **COUNT I (IAC's Infringement of the '295 Patent)**

28. TLI incorporates by reference paragraphs 1 through 27 of the Complaint as if set forth here in full.

#### **Direct Infringement**

29. IAC 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, IAC has directly infringed and continues to directly infringe the '295 Patent in this judicial district and elsewhere in the United States. IAC'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.

30. Specifically, IAC's direct infringement includes, without limitation (i) its uploading of digital images from mobile devices having telephones onto IAC servers (or onto

servers operated on or for IAC's behalf ("IAC servers")), (ii) its testing of its IAC products by uploading images from mobile devices having telephones onto IAC servers within the United States, and (iii) its maintaining IAC servers that categorize and store images that were uploaded via mobile devices having telephones. IAC 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 IAC servers within the United States.

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

32. To the extent that claim 17 of the '295 Patent is construed to require a method with a step not practiced by IAC, IAC would also directly infringe claim 17 at least because it directs and/or controls the practicing of all claimed steps. IAC directs and/or controls the



practicing of all claim elements, as shown for example, by IAC entering into contracts with its users, IAC instructing its users how to upload digital images from mobile devices having telephones, IAC automatically syncing digital images from mobile devices having telephones onto its servers, IAC automatically uploading digital images from mobile devices having telephones onto its servers, IAC pre-loading image uploading software on mobile devices having telephones, IAC automatically tagging digital images that it uploads onto its servers from mobile devices having telephones with characterization information of the users, and IAC automatically archiving the digital images that it uploads onto its servers with characterization information of the users.

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

34. 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 IAC platform, these elements are satisfied under the doctrine of equivalents.

### **Indirect Infringement**

35. Alternatively, and in addition to its liability for direct infringement of the '295 Patent, IAC 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).

36. IAC has been aware of the '295 Patent since at least November 20, 2013, when it was served with the original complaint in this action (D.I. 1), which was filed on November 18, 2013. The original complaint is incorporated herein by reference.

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

38. The direct infringement induced and contributed to by IAC includes at least the uploading of digital images from mobile devices having telephones to IAC servers by end users acting alone or in combination with IAC. 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, for example, that IAC does not direct and/or control that user), the user would be considered to be a direct infringer of claim 1. IAC knows that these users are infringing the '295 Patent and IAC 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 IAC, for example, a user (and it is determined, for example, that IAC does not direct and/or control these entities), IAC 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.

39. IAC 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 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.

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

41. IAC 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 IAC 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.

42. 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 IAC image uploading platforms, IAC 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.

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

44. 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 IAC image uploading platforms, IAC 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**

45. IAC 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**

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

**Remedy for IAC's Infringement**

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

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

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

**COUNT II (Vimeo's Infringement of the '295 Patent)**

50. TLI incorporates by reference paragraphs 1 through 49 of the Complaint as if set forth here in full.

**Direct Infringement**

51. Vimeo 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, Vimeo has directly infringed and continues to directly infringe the '295 Patent in this judicial district and elsewhere in the United States. Vimeo'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.

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

53. To the extent that claim 1 of the '295 Patent is construed to require a system with a claim element not practiced by Vimeo, Vimeo 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, Vimeo provides websites, platforms and software to mobile telephone users that provide and enable image uploading, thereby putting the invention into service. Moreover, Vimeo directs and/or controls the practicing of all claim elements, as shown for example, by Vimeo entering into contracts with its users, Vimeo instructing its users how to upload digital images from mobile devices having telephones, Vimeo automatically syncing digital images from mobile devices having telephones onto its servers, Vimeo automatically

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

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

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

56. 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 Vimeo platform, these elements are satisfied under the doctrine of equivalents.

### **Indirect Infringement**

57. Alternatively, and in addition to its liability for direct infringement of the '295 Patent, Vimeo 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).

58. Vimeo has been aware of the '295 Patent since at least November 20, 2013, when it was served with the original complaint in this action (D.I. 1), which was filed on November 18, 2013. The original complaint is incorporated herein by reference.

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

60. The direct infringement induced and contributed to by Vimeo includes at least the uploading of digital images from mobile devices having telephones to Vimeo servers by end users acting alone or in combination with Vimeo. 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, for example, that Vimeo does not direct and/or control that user), the user would be considered to be a direct infringer of claim 1. Vimeo knows that these users are infringing the '295 Patent and Vimeo 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 Vimeo, for example, a user (and it is determined, for example,



that Vimeo does not direct and/or control these entities), Vimeo 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.

61. Vimeo 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 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>2</sup>

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

---

<sup>2</sup> See, for example, <http://vimeo.com/help/faq/mobile-apps/vimeo-on-ios>; <http://vimeo.com/help/faq/mobile-apps/android-app>; <http://vimeo.com/help/faq/mobile-apps/mobile-videos>; <http://vimeo.com/videoschool/101>; <http://vimeo.com/videoschool>; <http://vimeo.com/help/basics>; <http://vimeo.com/about>; <https://itunes.apple.com/us/app/vimeo/id425194759?mt=8&ign-mpt=uo%3D4>; <https://play.google.com/store/apps/details?id=com.vimeo.android.videoapp>.

instructing its users how to upload images to Vimeo servers, thereby inducing the use of the claimed inventions.<sup>3</sup>

63. Vimeo 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 Vimeo 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.

64. 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 Vimeo image uploading platforms, Vimeo 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.

65. Vimeo 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 Vimeo'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, Vimeo provides components, including image-uploading, pre-loaded software, websites and/or downloadable applications, for use in systems, which facilitate the uploading of digital images

---

<sup>3</sup> *See id.*

from mobile devices having telephones. Vimeo 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. Vimeo knows that by providing such components to its customers, its customers will infringe at least one claim of the '295 Patent, and Vimeo knows that its customers do infringe the '295 Patent. Vimeo image uploading software has no substantial non-infringing uses.

66. 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 Vimeo image uploading platforms, Vimeo 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**

67. Vimeo 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**

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

**Remedy for Vimeo's Infringement**

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

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

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

**COUNT III (CityGrid's Infringement of the '295 Patent)**

72. TLI incorporates by reference paragraphs 1 through 71 of the Complaint as if set forth here in full.

**Direct Infringement**

73. CityGrid 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, CityGrid has directly infringed and continues to directly infringe the '295 Patent in this judicial district and elsewhere in the United States. CityGrid'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.

74. Specifically, CityGrid's direct infringement includes, without limitation (i) its uploading of digital images from mobile devices having telephones onto CityGrid servers (or onto servers operated on or for CityGrid's behalf ("CityGrid servers")), (ii) its testing of its

CityGrid products by uploading images from mobile devices having telephones onto CityGrid servers within the United States, and (iii) its maintaining CityGrid servers that categorize and store images that were uploaded via mobile devices having telephones. CityGrid 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 CityGrid servers within the United States.

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

76. To the extent that claim 17 of the '295 Patent is construed to require a method with a step not practiced by CityGrid, CityGrid would also directly infringe claim 17 at least because it directs and/or controls the practicing of all claimed steps. CityGrid directs and/or

controls the practicing of all claim elements, as shown for example, by CityGrid entering into contracts with its users, CityGrid instructing its users how to upload digital images from mobile devices having telephones, CityGrid automatically syncing digital images from mobile devices having telephones onto its servers, CityGrid automatically uploading digital images from mobile devices having telephones onto its servers, CityGrid pre-loading image uploading software on mobile devices having telephones, CityGrid automatically tagging digital images that it uploads onto its servers from mobile devices having telephones with characterization information of the users, and CityGrid automatically archiving the digital images that it uploads onto its servers with characterization information of the users.

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

78. 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 CityGrid platform, these elements are satisfied under the doctrine of equivalents.

### **Indirect Infringement**

79. Alternatively, and in addition to its liability for direct infringement of the '295 Patent, CityGrid 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).

80. CityGrid has been aware of the '295 Patent since at least November 20, 2013, when it was served with the original complaint in this action (D.I. 1), which was filed on November 18, 2013. The original complaint is incorporated herein by reference.

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

82. The direct infringement induced and contributed to by CityGrid includes at least the uploading of digital images from mobile devices having telephones to CityGrid servers by end users acting alone or in combination with CityGrid. 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, for example, that CityGrid does not direct and/or control that user), the user would be considered to be a direct infringer of claim 1. CityGrid knows that these users are infringing the '295 Patent and CityGrid 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 CityGrid, for example, a user (and it is determined, for example, that CityGrid does not direct and/or control these entities), CityGrid 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.

83. CityGrid 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 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>4</sup>

84. CityGrid induces infringement at least by encouraging, facilitating and instructing users to use the '295 Patent's inventions by uploading digital images to CityGrid servers from mobile devices having telephones. CityGrid does this by providing image uploading software and platforms (including, for example, automatic upload software, and pre-loaded, downloadable and/or directly accessible upload software via CityGrid websites and platforms) to its users, and by instructing its users how to upload images to CityGrid servers, thereby inducing the use of the claimed inventions.<sup>5</sup>

85. CityGrid 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 CityGrid 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.

---

<sup>4</sup> See, for example, <http://www.urbanspoon.com/faq>; <https://itunes.apple.com/us/app/urbanspoon/id284708449?mt=8>; <https://play.google.com/store/apps/details?id=com.urbanspoon>.

<sup>5</sup> See *id.*



86. 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 CityGrid image uploading platforms, CityGrid 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.

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

88. 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 CityGrid image uploading platforms, CityGrid 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**

89. CityGrid 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**

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

**Remedy for CityGrid's Infringement**

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

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

93. CityGrid's acts of infringement have caused and will continue to cause irreparable harm to TLI unless and until CityGrid 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 Defendants have indirectly infringed the '295 Patent;

C. That IAC and its customers, users, suppliers, agents and affiliates have jointly infringed the '295 Patent;

D. That Vimeo and its customers, users, suppliers, agents and affiliates have jointly infringed the '295 Patent;

E. That CityGrid and its customers, users, suppliers, agents and affiliates have jointly infringed the '295 Patent;

F. An order 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

Respectfully submitted,

**FARNAN LLP**

/s/ Brian E. Farnan

Brian E. Farnan (Bar No. 4089)

Michael J. Farnan (Bar No. 5165)

919 North Market Street, 12th Floor

Wilmington, Delaware 19801

302-777-0300

302-777-0301

bfarnan@farnanlaw.com

*Attorney for Plaintiff*

Of Counsel:

Robert A. Whitman

Mark S. Raskin

Mishcon de Reya New York LLP

750 Seventh Ave, 26th Floor

New York, New York 10019

Telephone (212) 612-3270

Facsimile (212) 612-3297