	Case 2:14-cv-05932	Document 1	Filed 07/29	0/14 Page 1 of 10	Page ID #:1
1 2 3 4 5 6 7 8 9 10	ALAN M. KINDRED, akindred@leechtish IVAN POSEY, ESQ. (iposey@leechtishm LEECH TISHMA The Walnut Plaza 215 N. Marengo Av Pasadena, Californi Telephone: (626) 8 Facsimile: (213) 55 ANDREW KOCHANO akochanowski@son SOMMERS SCHV One Towne Square Southfield, MI 480 Telephone: (248) 33 Facsimile: (248) 93	iman.com SBN 196386 an.com N FUSCALI venue, Suite 1 a 91101 17-7500 9-8822 WSKI (<i>pro ha</i> nmerspc.com WARTZ, PC , Suite 1700 76 55-0300) DO & LAN 135 Ec vice to be		
10 11 12 13 14 15 16 17 18 19	Facsimile: (248) 936-2140 MATTHEW J.M. PREBEG (pro hac vice to be filed) mprebeg@pfalawfirm.com MATTHEW S. COMPTON (pro hac vice to be filed) mcompton@pfalawfirm.com PREBEG, FAUCETT & ABBOTT PLLC 8441 Gulf Freeway, Suite 307 Houston, TX 77017 Telephone: (832) 742-9260 Facsimile: (832) 742-9261 Attorneys for Plaintiff, NETJUMPER SOFTWARE, LLC UNITED STATES DISTRICT COURT				
20 21	CENTRAL DISTRICT OF CALIFORNIA				
22 23 24	NETJUMPER SOF Michigan limited li Plainti	ability compa	iny, CO	SE NO.: 14CV-0 MPLAINT FOR FRINGEMENT	
25 26 27	vs. DEVIANTART, IN corporation,	IC., a Delawa	ire DE	MAND FOR JU	RY TRIAL
28	Defend	lant.			
	COMPLAINT AND DEMAND FOR JURY TRIAL				L

Plaintiff NetJumper Software, L.L.C. ("NetJumper"), by and through its 1 attorneys, brings this action against Defendant deviantART, Inc. ("deviantART"), 2 and for its claims of relief avers as follows: 3

JURISDICTION AND VENUE

6 1. This action arises under the patent laws of the United States, Title 35 7 United States Code, particularly §§ 271, 281, 283, 284 and 285. This Court has jurisdiction over the claims for patent infringement under 28 U.S.C. §§ 1331 and 8 1338(a). 9

2. Venue is proper in this judicial District under 28 U.S.C. § 1391 10 and/or 1400(b) as this action relates to patents, and Defendant, on information 11 and belief, has committed acts of infringement here, and further resides in this 12 13 judicial District.

3. This Court has personal jurisdiction over Defendant because 14 Defendant's principal place of business is in this District. Further, Defendant 15 16 offers Internet photo-sharing services and other related services to persons in California. These services include photo sharing, video sharing, artwork sharing, 17 slideshows, and the opportunity to buy and sell art, all of which are accessible by 18 any person in California with Internet access. On information and belief, persons 19 in California and in this judicial District access and use Defendant's services, 20 including the Accused Products identified below in this Complaint. 21

THE PARTIES

Plaintiff NetJumper is a Michigan limited liability company with 24 4. offices in Bloomfield Hills, Michigan. 25

5. 26 Defendant deviantART is a Delaware corporation with its principal place of business at 7095 Hollywood Boulevard, Suite 788, Hollywood, 27 California 90028. 28

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6. Throughout this pleading, and unless specifically noted otherwise,
 Defendant deviantART will be referenced as "Defendant." The term "Defendant"
 also includes deviantART's employees, agents, and all other persons or entities
 that deviantART directs and/or controls.

THE PATENT

7 7. On May 1, 2001, United States Patent No. 6,226,655, entitled
8 "Method and Apparatus for Retrieving Data from a Network Using Linked
9 Location Identifiers," was duly and legally issued ("the '655 patent"). A true and
10 correct copy of the '655 patent is attached as Exhibit 1.

8. Pursuant to 35 U.S.C. § 282, the '655 patent is presumed valid.

9. NetJumper is the sole owner of all substantial rights in the '655 patent, including the exclusive right to grant sublicenses to the '655 patent and to file lawsuits and seek damages for past, present, and future infringement of the '655 patent.

10. NetJumper has complied with the marking provisions of 35 U.S.C. § 287 and is entitled to past damages.

<u>FIRST CLAIM FOR RELIEF</u> <u>INFRINGEMENT OF U.S. PATENT NO. 6,226,655</u> (Direct Infringement)

11. By making, using, selling, or offering to sell within the United
States, the slideshow services or features containing a user selectable delay made
available throughout its content-sharing website, www.deviantART.com, and
other related or linked websites, including but not limited to deviantART.net
("Accused Products"), Defendant has directly infringed and continues to directly
infringe at least Claim 1 of the '655 patent, either literally or by equivalents, and
will continue to do so unless enjoined by this Court.

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<u>SECOND CLAIM FOR RELIEF</u> <u>INFRINGEMENT OF U.S. PATENT NO. 6,226,655</u> (Vicarious Liability)

12. At least by virtue of agreements with website users and/or transmitting the Accused Products to website users in the United States, Defendant is vicariously liable for the acts of the computers of users (in the United States) of Defendant's website that automatically receive and/or automatically execute the Accused Products.

9 13. Defendant has entered, and continues to enter, into agreements with
10 its website users that forbid its website users from interfering with or disrupting
11 the operation of the Accused Products.

12 14. Defendant has entered, and continues to enter, into agreements with13 its users that forbid its users from altering or modifying the Accused Products.

14 15. Defendant has entered, and continues to enter, into agreements with
15 its users that Defendant is the owner of all copyrights and "data rights" in the
16 Accused Products.

17 16. These agreements are contained in the "Terms of Service" available18 at least on the Defendant's website at

19 http://about.deviantART.com/policy/service/ and attached as **Exhibit 2**.

20 17. The Accused Products contain software code that causes said
21 computers that receive the Accused Products to automatically execute the
22 Accused Products without further intervention from the website user.

23 18. The execution of the Accused Products directly infringes at least
24 Claim 1 of the '655 patent, either literally or by equivalents.

19. Accordingly, at least by virtue of agreements with website users
and/or transmitting the Accused Products for automatic execution, Defendant is
vicariously liable for direct infringement because Defendant directs and/or
controls the transmitting and subsequent execution of the Accused Products by

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said website users' computers and thus causes said computers to directly infringe
 at least Claim 1 of the '655 patent, either literally or by equivalents, and will
 continue to do so unless enjoined by this Court.

<u>THIRD CLAIM FOR RELIEF</u> <u>INFRINGEMENT OF U.S. PATENT NO. 6,226,655</u> (Inducement of Infringement)

8 20. Defendant had actual knowledge of the '655 patent by virtue of a
9 notice letter, attached as Exhibit 3, sent by Plaintiff and received by Defendant
10 prior to the filing of this litigation.

11 21. At least as early as the serving of the Complaint in this lawsuit,
12 Defendant had actual knowledge of the '655 patent as a matter of law.

13 22. At least as early as the serving of the Complaint in this lawsuit,
14 Defendant was willfully blind toward the existence of the '655 patent.

15 23. Since becoming aware of the '655 patent, Defendant has continued
16 to intentionally, actively, knowingly, and willfully advertise about, promote
17 and/or describe the Accused Products through its website, as well as in other
18 ways.

19 24. Since becoming aware of the '655 patent, Defendant's advertising, 20 promotion and descriptions of the Accused Products have intentionally, actively, 21 knowingly and willfully contained, and continue to contain, instructions, 22 directions, suggestions and/or invitations that intentionally, actively and knowingly invite, entice, lead on, influence, prevail on, move by persuasion, 23 cause and/or influence the public and/or Defendant's customers and/or website 24 users to use the Accused Products to practice the inventions claimed in the '655 25 patent, and thus directly infringe at least Claim 1 of the '655 patent, either 26 27 literally or by equivalents. These instructions, directions, suggestions and/or invitations include, but are not limited to, the invitation to "Set up a profile, create 28

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galleries, and build a fan base" and "Present your artwork dynamically with the 1 Sitback slideshow player" presented on Defendant's "Take the Tour" pages at 2 3 deviantART.com, invitations and instructions to use the slideshow player in Help & FAQ pages, as well as Defendant's placing of slideshow buttons, links, and/or 4 5 icons throughout the deviantART.com website.

6 25. Since becoming aware of the '655 patent, Defendant has been 7 willfully blind, has known, or should have known that the public's and 8 Defendant's customers' acts relative to using the Accused Products to practice the 9 inventions claimed in the '655 patent, directly infringe, either literally or by equivalents, at least Claim 1 of the '655 patent. 10

11 26. For at least these reasons, Defendant is liable for inducing infringement of the '655 patent, either literally or under the doctrine of 12 13 equivalents.

FOURTH CLAIM FOR RELIEF **INFRINGEMENT OF U.S. PATENT NO. 6,226,655** (Contributory Infringement)

27. 18 At least for the reasons stated above, Defendant has had actual knowledge of the '655 patent or, at a minimum, has been willfully blind toward 19 20 the existence of the '655 patent.

21 28. Since becoming aware of the '655 patent, Defendant has 22 intentionally, actively, and knowingly offered slideshow software, such as the Accused Products, to its website users in the United States through its website 23 deviantART.com. 24

29. By offering the slideshow software and/or the components thereof to 25 users in the United States, Defendant has contributed to infringement by the 26 27 public and the customers who use the software to practice at least Claim 1 of the 28 '655 patent, and thus directly infringe the '655 patent, either literally or under the

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1 doctrine of equivalents.

30. The slideshow software is a material used in practicing the patented
process of at least Claim 1 of the '655 patent because the slideshow software,
when executed, directly infringes at least Claim 1, either literally or under the
doctrine of equivalents.

31. The slideshow software is a material part of the invention of at least
Claim 1 of the '655 patent because it contains the necessary instructions to enable
a website user to practice the method of at least Claim 1, either literally or under
the doctrine of equivalents, in relation to the Defendant's website.

32. The slideshow software is a material part of the invention of at least
Claim 1 of the '655 patent because without the instructions contained in the
software, the website user's computer is unable to practice the method of at least
Claim 1, either literally or under the doctrine of equivalents, in relation to the
Defendant's website.

15 33. The slideshow software is a material part of the invention of at least
16 Claim 1 of the '655 patent because the instructions contained in the software
17 instruct a computer to perform a majority of the steps of at least Claim 1, either
18 literally or under the doctrine of equivalents, including at least the "receiving,"
19 "parsing," and "automatically sending" steps.

34. Since becoming aware of the '655 patent, Defendant has been
willfully blind, has known, or should have known that the slideshow software is
especially made or especially adapted for use in an infringement of at least
Claim 1 of the '655 patent, either literally or under the doctrine of equivalents, for
the same reasons stated above in regards to the materialness of slideshow
software with respect to at least Claim 1.

35. Since becoming aware of the '655 patent, Defendant has been
willfully blind, has known, or should have known that the slideshow software is
not a staple article or commodity of commerce suitable for substantial

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noninfringing use because the software has no substantial use other than to be
 executed by a computer, which execution by a computer directly infringes at least
 Claim 1 of the '655 patent, either literally or under the doctrine of equivalents.

36. Since becoming aware of the '655 patent, Defendant has been
willfully blind, has known, or should have known that the slideshow software is
not a staple article or commodity of commerce suitable for substantial
noninfringing use for the same reasons stated above in regards to the materialness
of slideshow software with respect to at least Claim 1.

9 37. For at least these reasons, Defendant is a contributory infringer of at
10 least Claim 1 of the '655 patent, either literally or under the doctrine of
11 equivalents.

FIFTH CLAIM FOR RELIEF

INFRINGEMENT OF U.S. PATENT NO. 6,226,655

(Willful Infringement)

16 38. For the reasons stated above, Defendant has had actual knowledge of
17 the '655 patent and notice from Plaintiff of its infringement of the '655 patent
18 prior to the filing of this lawsuit.

19 39. The infringement of the '655 patent by Defendant has occurred with20 knowledge of the '655 patent and has thus been willful and wanton.

PRAYER FOR RELIEF

24 WHEREFORE, Plaintiff NetJumper prays for entry of judgment against25 Defendant deviantART, Inc. as follows:

A. That Defendant has directly infringed, vicariously infringed,

27 contributorily infringed, and has actively induced others to infringe one or more

28 claims of the '655 patent;

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That Defendant's infringement of the '655 patent was and continues Β. 1 to be willful and wanton; 2

C. 3 That Defendant accounts for and pays NetJumper damages adequate to compensate for past infringement of the '655 patent by Defendant, in an 4 5 amount no less than a reasonable royalty, in a sum to be determined at trial, and that said damages be trebled in view of the willful and wanton nature of the 6 infringement; 7

That NetJumper be granted pre-judgment and post-judgment interest D. 8 on the damages caused to it by reason of Defendant's infringement of the '655 9 patent; 10

That this case is exceptional under 35 U.S.C. § 285 and that 11 E. NetJumper be granted its attorneys' fees incurred in this action; 12

> F. That NetJumper be awarded its costs in this action; and

That NetJumper be granted such other and further relief that is just 14 G.

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LEECH TISHMAN FUSCALDO & LAMPL, LLP 626.817.7500

15	and proper under the circumstances.			
16				
17	Datade July 20, 2014	Deeneetfully submitted		
18	Dated: July 29, 2014	Respectfully submitted,		
19		LEECH TISHMAN FUSCALDO &		
20		LAMPL, LLP		
21		/s/ Alan M. Kindred		
22		Alan M. Kindred		
23		Ivan Posey		
24		Attorneys for Plaintiff,		
25		NetJumper Software, LLC		
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1	DEN	MAND FOR JURY TRIAL				
2	Pursuant to Rule 38(b), F. R. Civ. P., Plaintiff hereby demands trial by jury					
3	on all issues so triable, including the Defendant's affirmative defenses and					
4	counterclaims, if any.					
5						
6						
7	Dated: July 29, 2014	Respectfully submitted,				
8 9		LEECH TISHMAN FUSCALDO & LAMPL, LLP				
10		,,,,,,,				
11		/s/ Alan M. Kindred				
12		Alan M. Kindred Ivan Posey				
13		-				
14		Attorneys for Plaintiff, NetJumper Software, LLC				
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