

LEECH TISHMAN FUSCALDO & LAMPL, LLP  
626.817.7500

1 ALAN M. KINDRED, ESQ. (SBN 135145)  
akindred@leechtishman.com  
2 IVAN POSEY, ESQ. (SBN 196386)  
iposey@leechtishman.com  
3 **LEECH TISHMAN FUSCALDO & LAMPL, LLP**  
4 The Walnut Plaza  
215 N. Marengo Avenue, Suite 135  
5 Pasadena, California 91101  
Telephone: (626) 817-7500  
6 Facsimile: (213) 559-8822

7 ANDREW KOCHANOWSKI (*pro hac vice to be filed*)  
akochanowski@sommerspc.com  
8 **SOMMERS SCHWARTZ, PC**  
9 One Towne Square, Suite 1700  
Southfield, MI 48076  
10 Telephone: (248) 355-0300  
Facsimile: (248) 936-2140

11 MATTHEW J.M. PREBEG (*pro hac vice to be filed*)  
mprebeg@pfalawfirm.com  
12 MATTHEW S. COMPTON (*pro hac vice to be filed*)  
13 mcompton@pfalawfirm.com  
**PREBEG, FAUCETT & ABBOTT PLLC**  
14 8441 Gulf Freeway, Suite 307  
Houston, TX 77017  
15 Telephone: (832) 742-9260  
16 Facsimile: (832) 742-9261

17 *Attorneys for Plaintiff,*  
NETJUMPER SOFTWARE, LLC

18  
19 **UNITED STATES DISTRICT COURT**  
20 **CENTRAL DISTRICT OF CALIFORNIA**

21  
22 NETJUMPER SOFTWARE, LLC, a  
23 Michigan limited liability company,  
24 Plaintiff,  
25 vs.  
26 DEVIANTART, INC., a Delaware  
27 corporation,  
28 Defendant.

CASE NO.: 14CV-05932  
**COMPLAINT FOR PATENT  
INFRINGEMENT**  
**DEMAND FOR JURY TRIAL**

LEECH TISHMAN FUSCALDO & LAMPL, LLP  
626.817.7500

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

4  
5 **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  
8 jurisdiction over the claims for patent infringement under 28 U.S.C. §§ 1331 and  
9 1338(a).

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

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

22  
23 **THE PARTIES**

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

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





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

4  
5 **THIRD CLAIM FOR RELIEF**  
6 **INFRINGEMENT OF U.S. PATENT NO. 6,226,655**

7 **(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  
23 knowingly invite, entice, lead on, influence, prevail on, move by persuasion,  
24 cause and/or influence the public and/or Defendant's customers and/or website  
25 users to use the Accused Products to practice the inventions claimed in the '655  
26 patent, and thus directly infringe at least Claim 1 of the '655 patent, either  
27 literally or by equivalents. These instructions, directions, suggestions and/or  
28 invitations include, but are not limited to, the invitation to "Set up a profile, create

LEECH TISHMAN FUSCALDO & LAMPL, LLP  
626.817.7500

1 galleries, and build a fan base” and “Present your artwork dynamically with the  
2 Sitback slideshow player” presented on Defendant’s “Take the Tour” pages at  
3 deviantART.com, invitations and instructions to use the slideshow player in Help  
4 & FAQ pages, as well as Defendant’s placing of slideshow buttons, links, and/or  
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  
10 equivalents, at least Claim 1 of the ‘655 patent.

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

14  
15 **FOURTH CLAIM FOR RELIEF**  
16 **INFRINGEMENT OF U.S. PATENT NO. 6,226,655**  
17 **(Contributory Infringement)**

18 27. At least for the reasons stated above, Defendant has had actual  
19 knowledge of the ‘655 patent or, at a minimum, has been willfully blind toward  
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  
23 Accused Products, to its website users in the United States through its website  
24 deviantART.com.

25 29. By offering the slideshow software and/or the components thereof to  
26 users in the United States, Defendant has contributed to infringement by the  
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

LEECH TISHMAN FUSCALDO & LAMPL, LLP  
626.817.7500

1 doctrine of equivalents.

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

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

10 32. The slideshow software is a material part of the invention of at least  
11 Claim 1 of the ‘655 patent because without the instructions contained in the  
12 software, the website user’s computer is unable to practice the method of at least  
13 Claim 1, either literally or under the doctrine of equivalents, in relation to the  
14 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.

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

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

LEECH TISHMAN FUSCALDO & LAMPL, LLP  
626.817.7500

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

4 36. Since becoming aware of the '655 patent, Defendant has been  
5 willfully blind, has known, or should have known that the slideshow software is  
6 not a staple article or commodity of commerce suitable for substantial  
7 noninfringing use for the same reasons stated above in regards to the materialness  
8 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.

12  
13 **FIFTH CLAIM FOR RELIEF**  
14 **INFRINGEMENT OF U.S. PATENT NO. 6,226,655**  
15 **(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 with  
20 knowledge of the '655 patent and has thus been willful and wanton.

21  
22  
23 **PRAYER FOR RELIEF**

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

26 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;



LEECH TISHMAN FUSCALDO & LAMPL, LLP  
626.817.7500

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

B. That Defendant’s infringement of the ‘655 patent was and continues to be willful and wanton;

C. That Defendant accounts for and pays NetJumper damages adequate to compensate for past infringement of the ‘655 patent by Defendant, in an 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 infringement;

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

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

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

G. That NetJumper be granted such other and further relief that is just and proper under the circumstances.

Dated: July 29, 2014

Respectfully submitted,

**LEECH TISHMAN FUSCALDO &  
LAMPL, LLP**

/s/ Alan M. Kindred  
Alan M. Kindred  
Ivan Posey

*Attorneys for Plaintiff,*  
NetJumper Software, LLC

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b), F. R. Civ. P., Plaintiff hereby demands trial by jury on all issues so triable, including the Defendant’s affirmative defenses and counterclaims, if any.

Dated: July 29, 2014

Respectfully submitted,

**LEECH TISHMAN FUSCALDO &  
LAMPL, LLP**

/s/ Alan M. Kindred  
Alan M. Kindred  
Ivan Posey

*Attorneys for Plaintiff,*  
NetJumper Software, LLC

LEECH TISHMAN FUSCALDO & LAMPL, LLP  
626.817.7500

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28