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10
11 **IN THE UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 EVERYMD.COM LLC, a
14 California Limited Liability
15 Company,

16 Plaintiff,

17 v.

18 GOOGLE INC., a Delaware
19 Corporation,

20 Defendant.

Civil Action No. 2:15-cv-3714

**COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

21 COMES NOW, Plaintiff EVERYMD.COM LLC (“Plaintiff” or “EveryMD”),
22 and on information and belief alleges as follows:

23 **JURISDICTION AND VENUE**

24 1. This is an action for patent infringement under 35 U.S.C. §§ 271 et. seq.
25 and 28 U.S.C. §§ 1331 and 1338(a).

26 2. The acts of patent infringement alleged herein occurred within this
27 judicial district, Plaintiff resides in this district, and Defendant GOOGLE INC.
28

1 (“Defendant” or “Google”) is subject to personal jurisdiction in this district.
2 Therefore, venue is proper pursuant to 28 U.S.C. §§ 1391(b), (c), and 1400(b).
3

4 **PARTIES**

5 3. Plaintiff is a California Limited Liability Company with a place of
6 business at 2032 Whitley Ave., Los Angeles, CA 90068.

7 4. Defendant is a Delaware Corporation with a place of business at 1600
8 Amphitheatre Parkway, Mountain View, CA 94043.
9

10 **FIRST CAUSE OF ACTION**
11 **PATENT INFRINGEMENT**

12 5. Plaintiff incorporates by reference paragraphs 1 – 4 as though fully set
13 forth herein.

14 6. Plaintiff owns the website www.everymd.com.

15 7. Plaintiff’s website at www.everymd.com has since the year 2000
16 provided email messaging services allowing patients to communicate with over
17 300,000 doctors.

18 8. Plaintiff’s principals Frank Weyer and Troy Javaher (collectively, “the
19 EveryMD inventors”) invented numerous novel technologies and inventions during
20 development of the www.everymd.com website.
21

22 9. On November 23, 1999, the EveryMD inventors filed U.S. Patent
23 Application Serial No. 09/447,755 entitled “Method Apparatus and Business System
24 for Online Communications with Online and Offline Recipients” disclosing the
25 inventions made by the EveryMD inventors while developing the www.everymd.com
26 website.

27 10. To date, four separate patents covering four separate inventions have
28 issued from the patent application originally filed in November 1999. Those patents

1 are U.S. Patent Nos. 6,671,714 (issued December 30, 2003), 7,644,122 (issued
2 January 5, 2010), 8,499,047 (issued July 30, 2013), and 8,504,631 (issued August 6,
3 2013).
4

5 11. Plaintiff is the assignee of record of U.S. Patent 8,504,631 entitled
6 “Method, Apparatus and Business System for Online Communications with Online
7 and Offline Recipients” (“the ‘631 patent”). A copy of the ‘631 patent is attached as
8 Exhibit 1.

9 12. The ‘631 patent is valid and in full force and effect.

10 13. The ‘631 patent is directed to a novel method for providing notification
11 of online messages to a telephone number of a recipient.

12 14. Defendant Google directly infringes the ‘631 patent by practicing the
13 claimed invention of the ‘631 patent without authorization of Plaintiff.
14

15 15. Examples of how Defendant Google has directly infringed claims 1, 5, 7
16 and 8 of the ‘631 patent are set forth in the claim chart attached as Exhibit 2.

17 16. On September 5, 2013, EveryMD filed a Complaint against Google in the
18 U.S. District Court for the Central District of California as Civil Action No. 2:13-cv-
19 06490-MRP-FFMx (“the Original Action”) alleging infringement of United States
20 Patent No. 8,504,631 (“the ‘631 patent”).

21 17. On January 10, 2014, Google submitted to the Patent Trial and Appeal
22 Board of the United States Patent and Trademark Office (PTAB) a petition for Inter
23 Partes Review (“IPR”) of the ‘631 patent (Case No. IPR2014-00347).

24 18. On January 15, 2014, EveryMD stipulated with Google to stay the
25 Original Action pending a decision by the PTAB on Google’s petition for IPR.

26 19. On May 23, 2014, the PTAB denied Google’s petition for IPR.

27 20. On June 23, 2014, Google filed a request for rehearing of the PTAB’s
28 decision denying Google’s petition for IPR.

1 21. On June 30, 2014, the PTAB denied Google’s request for rehearing.

2 22. On July 9, 2014, Google’s attorney Stefani Shanberg stated in writing to
3 Plaintiff’s counsel: “In advance of tomorrow’s status conference, I wanted to inform
4 you that Google intends to file a second petition for IPR. It is our read that the PTAB
5 rejected the first petition largely because of the way it was drafted, and we intend to
6 resubmit a new petition based on some similar and some new grounds. We intend to
7 submit the petition within a month from now.”

8 23. During a status conference for the Original Action On July 10, 2014,
9 Google’s attorney Stefani Shanberg represented to the Court that Google would
10 “immediately” file a second petition for IPR of the ‘631 patent with the PTAB. Ms.
11 Shanberg stated: “So we know exactly what we need to do to refile that petition and
12 intend to do so immediately.”

13 24. On July 11, 2014, based on Google’s representation to the Court that
14 Google would “immediately” file a second petition for IPR, and in consideration of
15 the Court’s stated desire to not carry stayed, inactive cases on her docket, EveryMD
16 stipulated with Google to voluntarily dismiss the Original Action while Google
17 pursued the promised second petition for IPR of the ‘631 patent.

18 25. Despite Google’s attorney’s promise to the Court to do so, and
19 EveryMD’s good faith stipulated dismissal of the Original Action based on that
20 promise, Google did not file a second petition for IPR of the ‘631 patent, immediately
21 (as Google represented to the Court on July 10, 2014), within one month (as
22 represented to Plaintiff’s attorney in writing on July 9, 2014), or at all.

23 26. Google is now barred from filing the second petition for IPR pursuant to
24 35 U.S.C. § 315(b).
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26
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28

1
2 27. Google received actual notice of Plaintiff's patent rights at least as early
3 as September 5, 2013 but continued to act in conscious and willful disregard of those
4 rights after receiving such actual notice.

5
6 **DEMAND FOR RELIEF**

7 **WHEREFORE**, Plaintiff asks this Court to:

- 8 a. Enter judgment for Plaintiff against Defendant on this Complaint;
9 b. Award compensatory damages to Plaintiff and to increase those damages
10 three times in accordance with 35 U.S.C. § 284;
11 c. Award Plaintiff reasonable attorneys' fees in accordance with 35 U.S.C.
12 § 285;
13 d. Award Plaintiff interest and costs; and
14 e. Award Plaintiff such other and further relief as is just and proper.

15
16 **DEMAND FOR JURY TRIAL**

17 Plaintiff hereby demands a trial by jury of all issues so triable.

18
19 Respectfully submitted,
20 **TECHCOASTLAW™**

21
22 Dated: May 18, 2015

By: 

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