

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

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VERIFY SMART CORP.,

Plaintiff,

v.

FACEBOOK, INC.,

Defendant.

Case No.

COMPLAINT FOR PATENT
INFRINGEMENT

DEMAND FOR JURY TRIAL

Plaintiff Verify Smart Corp. (“Verify”) demands a jury trial and complains against Defendant Facebook, Inc. (“Facebook”).

THE PARTIES

1. Verify is a corporation organized and existing under the laws of the State of Nevada, conducting business in this judicial district.
2. Upon information and belief, Facebook is headquartered in Menlo Park, California and conducts business in this judicial district.

JURISDICTION AND VENUE

3. This action arises under the patent laws of the United States of America, Title 35 of the United States Code. This Court has jurisdiction of this action under 28 U.S.C. §§ 1331 and 1338(a).

4. Verify is informed and believes, and based thereon alleges, that Facebook is doing business and committing acts of infringement of the patent identified below in this judicial district, and is subject to personal jurisdiction in this judicial district.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(b).

THE PATENTS

6. On October 9, 2012, U.S. Patent No. 8,285,648 (“the ‘648 patent”) was duly and legally issued to Dan Scammell (“Scammell”) for an invention entitled “System and Method for Verifying A User’s Identity In Electronic Transactions”. On May 23, 2011, Scammell assigned all right, title and interest in and to the ‘648 patent to Colleen Scammell (“C. Scammell”). On July 8, 2015, C. Scammell assigned all right, title and interest in and to the ‘648 patent to Assured Mobile Technologies LLC (“Assured”). Thereafter, on July 8, 2015, Assured assigned all right, title and interest in and to the ‘648 patent to Verify. A copy of the ‘648 patent is attached to this Complaint as Exhibit 1.

7. The ‘648 patent is directed to novel systems and methods of verifying the identity of consumers initiating electronic transactions to provide enhanced security for such transactions.

DIRECT INFRINGEMENT BY FACEBOOK

8. Verify is informed and believes, and based thereon alleges, that Facebook makes, uses, tests, markets and sells or otherwise provides a system and method for enabling a user to authenticate their identity when initiating an electronic transaction, using a one-time pass-code sent to the user’s mobile phone (hereinafter “Facebook Two Factor Authentication”).

9. Verify is informed and believes, and based thereon alleges, that Facebook Two Factor Authentication is designed to enable secure transactions for Facebook's customers.

10. Verify is informed and believes, and based thereon alleges, that Facebook Two Factor Authentication infringes claims of the '648 patent, including without limitation at least claims 2 and 5, literally and/or under the doctrine of equivalents, in violation of Verify's rights.

FACEBOOK'S INDIRECT INFRINGEMENT

11. Verify is informed and believes, and based thereon alleges, that Facebook Two Factor Authentication is designed specifically to enable users to authenticate their identity in a manner that infringes the claims of the '648 patent, including without limitation at least claims 2 and 5 thereof.

12. Verify is informed and believes, and based thereon alleges, that Facebook Two Factor Authentication is material for enabling a user to authenticate their identity in a manner that infringes the claims of the '648 patent.

13. Verify is informed and believes, and based thereon alleges, that Facebook Two Factor Authentication is using a method for authenticating an identity in a manner that infringes the method claims of the '648 patent.

14. Verify is informed and believes, and based thereon alleges, that Facebook Two Factor Authentication does not have substantial non-infringing uses.

15. On its website at <https://www.facebook.com/notes/facebook-engineering/introducing-login-approvals/10150172618258920>, Facebook advertises that "As more individuals and businesses turn to Facebook to share and connect with others, people are looking to take more control over protecting their account from unauthorized access. Login approvals is a Two Factor Authentication system that requires you to enter a code we send to

your mobile phone via text message whenever you log into Facebook from a new or unrecognized computer. Once you have entered this security code, you'll have the option to save the device to your account so that you don't see this challenge on future logins."

16. On its website at <https://support.Facebook.com/en-us/HT204152>, Facebook provides the following graphic to show how its Two Factor Authentication system operates:



17. Facebook provides express instructions in its advertisement materials that teach and suggest to its customers to use Facebook Two Factor Authentication in a way that infringes at least claims 2 and 5 of the '648 patent.

18. Verify is informed and believes, and based thereon alleges, that Facebook has investigated the '648 patent and became aware, or should have become aware, that Facebook Two Factor Authentication infringes the '648 patent.

19. Verify is informed and believes, and based thereon alleges, that Facebook has been advertising and offering for use by its customers the infringing Facebook Two Factor Authentication after Facebook became aware that it infringed the '648 patent, and will continue with such infringing activities.

20. Verify is informed and believes, and based thereon alleges, that Facebook has been selling or otherwise providing Facebook Two Factor Authentication to its customers with

the specific knowledge of the '648 patent and the specific knowledge that Facebook Two Factor Authentication is and will be used to infringe the '648 patent, and that Facebook will continue such infringing activities.

21. Facebook is jointly responsible with each of its customers for the infringement of the '648 patent, through the use of Facebook Two Factor Authentication.

22. Facebook contributes to the infringement and induces infringement of the '648 patent based on its marketing, sale, distribution and teaching to its customers how to use Facebook Two Factor Authentication, and Facebook's own actions in assisting its customers in the operation of Facebook Two Factor Authentication.

23. Facebook has been and is actively inducing the infringement of the '648 patent by encouraging its customers to use Facebook Two Factor Authentication, that has no substantial non-infringing use and is material for enabling secure electronic transactions in a manner that constitutes direct infringement of the claims of the '648 patent. Facebook has been and continues doing so with knowledge of the '648 patent and with the specific intent that its customers use Facebook Two Factor Authentication in a manner that constitutes direct infringement of the claims of the '648 patent.

24. Facebook has been and is contributorily infringing the '648 patent by providing to its customers Facebook Two Factor Authentication, which has no substantial non-infringing use and is material for enabling secure electronic transactions in a manner that constitutes direct infringement of the claims of the '648 patent. Facebook has been and continues doing so with knowledge of the '648 patent and with the specific intent that its customers use Facebook Two Factor Authentication in a manner that constitutes direct infringement of the claims of the '648 patent.

25. Facebook's customers have been using Facebook's Facebook Two Factor Authentication in a manner that constitutes infringement of the '648 patent.

26. Facebook assists its customers with their infringing uses of Facebook Two Factor Authentication, including without limitation teaching its customer how to operate Facebook Two Factor Authentication, supporting its operation and providing testing, support and maintenance for Facebook Two Factor Authentication, either directly or through Facebook's authorized agents, affiliates and/or business partners.

27. Verify has been and is being damaged by the foregoing activities of Facebook and its customers which infringe the '648 patent, and will be irreparably harmed unless such infringing activities are enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Verify prays for judgment against Defendant Facebook on all the counts and for the following relief:

- A. Declaration that the Verify is the owner of the right to sue and to recover for infringement of the '648 patent being asserted in this action;
- B. Declaration that Facebook has directly infringed, actively induced the infringement of, and/or contributorily infringed the '648 patent;
- C. Declaration that Facebook and its customers are jointly or severally responsible for the damages from infringement of the '648 patent through the use of Facebook Two Factor Authentication;
- D. Declaration that Facebook is responsible jointly or severally with its customers for the damages caused by the infringement of the '648 patent through the use of Facebook Two Factor Authentication, by the Facebook's customers;

- E. A preliminary and permanent injunction against Facebook, each of its officers, agents, servants, employees, and attorneys, all parent and subsidiary corporations, their assigns and successors in interest, and those persons acting in active concert or participation with them, including distributors, enjoining them from continuing acts of direct infringement, active inducement of infringement, and contributory infringement of the '648 patent;
- F. An accounting for damages under 35 U.S.C. § 284 for infringement of the '648 patent by Facebook, and the award of damages so ascertained to Verify together with interest as provided by law;
- H. Award of Verify's costs and expenses;
- I. Award of Verify's attorney fees; and
- J. Such other and further relief as this Court may deem proper, just and equitable.

DEMAND FOR JURY TRIAL

Plaintiff Verify demands a trial by jury of all issues properly triable by jury in this action.

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Westfield, NJ 07090