

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

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VERIFY SMART CORP.,

Plaintiff,

v.

YAHOO! 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 Yahoo! Inc. (“Yahoo”).

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, Yahoo is headquartered in Sunnyvale, 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 Yahoo 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 YAHOO

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

9. Verify is informed and believes, and based thereon alleges, that Yahoo Two-Step Verification is designed to enable secure transactions for Yahoo's customers.

10. Verify is informed and believes, and based thereon alleges, that Yahoo Two-Step Verification 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.

YAHOO'S INDIRECT INFRINGEMENT

11. Verify is informed and believes, and based thereon alleges, that Yahoo Two-Step Verification is designed specifically to enable users to verify 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 Yahoo Two-Step Verification is material for enabling a user to verify their identity in a manner that infringes the claims of the '648 patent.

13. Verify is informed and believes, and based thereon alleges, that Yahoo Two-Step Verification 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 Yahoo Two-Step Verification does not have substantial non-infringing uses.

15. On its website at <https://help.yahoo.com/kb/SLN5013.html>, Yahoo advertises to "Add an extra layer of protection to your Yahoo account with two-step verification. Two-step verification uses both your password and an extra security code to verify your identity whenever you sign in to your account."

16. On its website at <https://help.yahoo.com/kb/SLN5013.html>, Yahoo also advertises that users can “choose” to receive “the verification code” via “an SMS” message.

17. On its website at <https://help.yahoo.com/kb/account/turn-yahoo-two-step-verification-sln6050.html>, Yahoo provides instructions to enable and use Yahoo Two-Step Verification system, including “to enter in the verification code field” the “code” received via “text” message:



18. Yahoo provides express instructions in its online materials that teach and suggest to its customers to use Yahoo Two-Step Verification in a way that infringes at least claims 2 and 5 of the ‘648 patent.

19. Verify is informed and believes, and based thereon alleges, that Yahoo has investigated the ‘648 patent and became aware, or should have become aware, that Yahoo Two-Step Verification infringes the ‘648 patent.

20. Verify is informed and believes, and based thereon alleges, that Yahoo has been advertising and offering for use by its customers the infringing Yahoo Two-Step Verification after Yahoo became aware that it infringed the ‘648 patent, and will continue with such infringing activities.

21. Verify is informed and believes, and based thereon alleges, that Yahoo has been selling or otherwise providing Yahoo Two-Step Verification to its customers with the specific knowledge of the '648 patent and the specific knowledge that Yahoo Two-Step Verification is and will be used to infringe the '648 patent, and that Yahoo will continue such infringing activities.

22. Yahoo is jointly responsible with each of its customers for the infringement of the '648 patent, through the use of Yahoo Two-Step Verification.

23. Yahoo 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 Yahoo Two-Step Verification, and Yahoo's own actions in assisting its customers in the operation of Yahoo Two-Step Authentication.

24. Yahoo has been and is actively inducing the infringement of the '648 patent by encouraging its customers to use Yahoo Two-Step Verification, 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. Yahoo has been and continues doing so with knowledge of the '648 patent and with the specific intent that its customers use Yahoo Two-Step Verification in a manner that constitutes direct infringement of the claims of the '648 patent.

25. Yahoo has been and is contributorily infringing the '648 patent by providing to its customers Yahoo Two-Step Verification, 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. Yahoo has been and continues doing so with

knowledge of the '648 patent and with the specific intent that its customers use Yahoo Two-Step Verification in a manner that constitutes direct infringement of the claims of the '648 patent.

26. Yahoo's customers have been using Yahoo Two-Step Verification in a manner that constitutes infringement of the claims of the '648 patent.

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

28. Verify has been and is being damaged by the foregoing activities of Yahoo 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 Yahoo 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 Yahoo has directly infringed, actively induced the infringement of, and/or contributorily infringed the '648 patent;
- C. Declaration that Yahoo and its customers are jointly or severally responsible for the damages from infringement of the '648 patent through the use of Yahoo Two-Step Verification;
- D. Declaration that Yahoo is responsible jointly or severally with its customers for

the damages caused by the infringement of the '648 patent through the use of Yahoo Two-Step Verification, by the Yahoo's customers;

- E. A preliminary and permanent injunction against Yahoo, 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 Yahoo, 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.

By: /s/ Jean-Marc Zimmerman

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Dated: November 5, 2015
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