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9 EveryMD.COM LLC

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 EBAY INC., a Delaware  
19 Corporation,

20 Defendant.

Civil Action No. 2:16-cv-00595

**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 EBAY INC.  
28

1 (“Defendant” or “Ebay”) is subject to personal jurisdiction in this district. Therefore,  
2 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 Avenue, Los Angeles, CA 90068.

7 4. Defendant is a Delaware Corporation with a place of business at 2065  
8 Hamilton Avenue, San Jose, California 95125.  
9

### 10 **THE EVERYMD PATENTS**

11 5. Plaintiff operates the website [www.everymd.com](http://www.everymd.com).  
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13 6. Plaintiff’s website at [www.everymd.com](http://www.everymd.com) has since 2001 provided  
14 individual home pages for over 300,000 doctors and electronic messaging services  
15 allowing patients to communicate with those 300,000 doctors.

16 7. Plaintiff’s principals Frank Weyer and Troy Javaher (collectively, “the  
17 EveryMD inventors”) invented numerous novel technologies and inventions during  
18 development of the [www.everymd.com](http://www.everymd.com) website.

19 8. On November 23, 1999, the EveryMD inventors filed U.S. Patent  
20 Application Serial No. 09/447,755 entitled “Method Apparatus and Business System  
21 for Online Communications with Online and Offline Recipients” disclosing the  
22 inventions made by the EveryMD inventors while developing the [www.everymd.com](http://www.everymd.com)  
23 website.  
24

25 9. To date, five separate patents covering four separate inventions have  
26 issued from the patent application originally filed in November 1999. Those patents  
27 (collectively, the “EveryMD Patents”) are U.S. Patent Nos. 6,671,714 (issued  
28

1 December 30, 2003), 7,644,122 (issued January 5, 2010), 8,499,047 (issued July 30,  
2 2013), 8,504,631 (issued August 6, 2013) and 9,137,192 (issued September 15, 2015).

3  
4 10. Plaintiff is the assignee of record of the EveryMD patents.

5 11. Plaintiff has provided constructive notice of the EveryMD patents by  
6 marking the patent numbers of the EveryMD patents on Plaintiff's website at  
7 www.everymd.com.

8 **U.S. PATENT NO. 8,499,047**

9 12. Plaintiff is the assignee of record of U.S. Patent No. 8,499,047 entitled  
10 "Method, Apparatus and Business System for Online Communications with Online  
11 and Offline Recipients" ("the '047 patent"). A copy of the '047 patent is attached as  
12 Exhibit 1.

13 13. EveryMD LLC, a prior assignee of the '047 patent, filed a Complaint  
14 ("the Original Complaint") against Ebay on October 30, 2013 in the U.S. District  
15 Court for the Central District of California as Civil Action No. 2:13-cv-08017-MRP-  
16 CWx alleging infringement by Ebay of claims 1-6 of the '631 patent ("the Original  
17 Action"). The Original Complaint set forth in detail how Ebay infringed claims 1-6 of  
18 the '631 patent. A copy of the Original Complaint is attached as Exhibit 2.

19 14. On December 6, 2013 third party Facebook, Inc. ("Facebook") filed a  
20 petition for Inter Partes Review of the '047 patent with the Patent Trial and Appeal  
21 Board ("PTAB") that was assigned proceeding no. IPR2014-00242 ("the IPR").

22 15. On December 23, 2013 Facebook filed a corrected petition for Inter  
23 Partes Review.

24 16. On December 27, 2013, Ebay's counsel in the Original Action requested  
25 that the Original Action be stayed pending the outcome of the IPR.  
26  
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1           17. On December 30, 2013, the PTAB accepted Facebook’s corrected  
2 petition.

3           18. On January 16, 2014, EveryMD LLC dismissed the Original Complaint  
4 without prejudice pending the outcome of the IPR in lieu of staying the Original  
5 Action so that the Original Action would not burden the Court’s docket.  
6

7           19. On May 21, 2014 the PTAB instituted Inter Partes Review only of claims  
8 1-3 and 5-6 of the ‘047 patent. The PTAB did not institute Inter Partes Review of  
9 claim 4 of the ‘047 patent.

10           20. Claim 4 of the ‘047 patent is not part of the IPR and pursuant to 35  
11 U.S.C. §282 remains valid and in full force and effect.

12           21. On July 27, 2014 EveryMD LLC filed a motion to amend in the IPR,  
13 canceling claims 1-3 and 5-6 and proposing new claims 7-11.  
14

15           22. On May 12, 2015 the PTAB issued a final written decision granting  
16 EveryMD LLC’s motion to cancel claims 1-3 and 5-6 but denying entry of amended  
17 claims 7-11.

18           23. On July 8, 2015, EveryMD LLC appealed the PTAB’s decision denying  
19 entry of amended claims 7-11 to the U.S. Court of Appeals for the Federal Circuit  
20 (“the Appeal”).

21           24. The Appeal has been fully briefed by the parties and is awaiting a date  
22 for oral hearing.

23           25. Regardless of the outcome of the Appeal, claims 1-3 and 5-6 of the ‘047  
24 patent will no longer be in effect, while claim 4 will continue to be valid and of full  
25 force and effect. Accordingly, there is no need to further delay continuing with a  
26 claim against Ebay for infringement of claim 4 of the ‘047 patent.  
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**FIRST CAUSE OF ACTION**  
**INFRINGEMENT OF CLAIM 4 OF U:S: PATENT NO: 8,499,047**

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2  
3       26. Plaintiff incorporates by reference paragraphs 1–25 as though fully set  
4 forth herein.

5       27. Claim 4 of ‘047 is a dependant claim, being dependant of claim 3, which  
6 in turn is dependent on claim 2, which is dependent on independent claim 1. As such,  
7 Claim 4 of the ‘047 patent includes all of the limitations of claims 1-3 of the ‘047  
8 patent, as well as the additional limitations recited in claim 4 itself.

9  
10       28. Defendant Ebay directly infringes claim 4 of the ‘047 patent by  
11 practicing the claimed invention of claim 4 of the ‘047 patent without authorization of  
12 Plaintiff.

13       29. One example of how Ebay directly infringed claim 4 of the ‘047 patent as  
14 of October 28, 2013 is set forth in paragraphs 15-31 of the Original Complaint  
15 (Exhibit 2).

16       30. A second example of how Ebay continues to directly infringe claim 4 of  
17 the ‘047 patent is set forth in the claim chart attached as Exhibit 3.

18       31. Ebay received actual notice of Ebay’s infringement of claim 4 of the ‘047  
19 patent at least as early as the filing date of the Original Complaint, October 30, 2013,  
20 but has continued to act in conscious and willful disregard of those rights after  
21 receiving such actual notice.

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1 **DEMAND FOR RELIEF**

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

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

15 **DEMAND FOR JURY TRIAL**

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

17 Respectfully submitted,  
18 **TECHCOASTLAW®**

19 Dated: January 27, 2016

20 By: 

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