

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

TANGELO IP, LLC,

Plaintiff,

V.

BROOKS BROTHERS GROUP, INC.,

Defendant.

Civil Action No. 2:16-cv-00205-JRG

JURY TRIAL DEMANDED

**AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Pursuant to FRCP 15(a)(1), Plaintiff, Tangelo IP, LLC, by and through its undersigned counsel, submits this Amended Complaint against the above-named Defendant, as follows:

**NATURE OF THE ACTION**

1. This is a patent infringement action to stop Defendant's infringement of United States Patent No. 8,429,005 (the "'005 Patent" or "Patent-in-Suit").

**THE PARTIES**

2. Plaintiff, Tangelo IP, LLC ("Tangelo"), is a Texas company with their principal place of business at 555 Republic Drive, 2nd Floor #42, Plano, Texas 75074.

3. Upon information and belief, Defendant, Brooks Brothers Group, Inc. ("BBGI") is a corporation existing under the laws of the state of Delaware with its principal place of business at 346 Madison Avenue, New York, New York 10017.

**JURISDICTION AND VENUE**

4. This action arises under the patent laws of the United States, 35 U.S.C. § 1 et seq., including 35 U.S.C. §§ 271, 281, 283, 284, and 285. This Court has subject matter jurisdiction over this case for patent infringement pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. The Court has personal jurisdiction over Defendant, including because Defendant has minimum contacts within the State of Texas; Defendant has purposefully availed itself of the privileges of conducting business in the State of Texas; Defendant regularly conducts business within the State of Texas; and Plaintiff's cause of action arises directly from Defendant's business contacts and other activities in the State of Texas, including at least by virtue of Defendant's interactive website and/or app that comprise infringing methods and apparatuses, including those accused methods and apparatuses described herein, which are at least used in and/or accessible in the State of Texas. Further, this Court has general jurisdiction over Defendant, including due to their continuous and systematic contacts with the State of Texas. Further, on information and belief, Defendant is subject to the Court's jurisdiction, including because Defendant has committed patent infringement in the State of Texas.

6. Venue is proper in the Eastern District of Texas pursuant to 28 U.S.C. §§ 1391 and 1400(b), including because Defendant has purposefully availed itself of the privileges of conducting business in this District; Defendant regularly conducts business within this District; and Plaintiff's cause of action arises directly from Defendant's business contacts and other activities in this District, including at least by virtue of Defendant's interactive website and/or app that comprise infringing methods and apparatuses, including those accused methods and apparatuses described herein, which are at least used in and/or accessible in this District. Further, Defendant has continuous and systematic contacts with this District.

7. More specifically, on information and belief, Defendant has interactive websites and/or apps comprising infringing methods which are at least used in and/or accessible in the State of Texas. Further, on information and belief, Defendant is subject to the Court's jurisdiction, including because Defendant has committed patent infringement in this District. Pursuant to 35

U.S.C. § 271, Defendant infringes the Patent-in-Suit by, without authority, its practicing the accused methods described herein in this District. Further, Defendant solicits customers/users in this District. On information and belief, Defendant has customers/users who are residents of this District and who purchase, acquire, and/or use Defendant's infringing products in this District.

## INTRODUCTION

### A. Tangelo LLC

8. The Patent-in-Suit is the '005 Patent. The Patent-in-Suit originated from Plaintiff's closely related operating entity, Tangelo, LLC (formerly known as Active8media, LLC), a developer of advanced interactive and shoppable image products. Tangelo's technology is already used by many major publishers to drive sales and connect readers and customers. Tangelo, LLC was awarded a MAX Marketing Award for their interactive image technology. It was also showcased on CNBC's Power Lunch for the implementation of Vogue Magazine's interactive ad images and the resulting highest revenue issue in Vogue's 110-year history.

9. Tangelo, LLC was co-founded by Todd Mannik, a visionary and inventor who is a named inventor on each of the patent-in-suit. Since at least 1999, Mr. Mannik has dedicated his career to focusing on the interactivity of photo images and the discovery of what's "inside" a photo. Mr. Mannik is the co-inventor of several patents, including the Patent-In-Suit, which represent pioneering advances in the transformation of images into interactive and shoppable images online.

10. Among other things, Tangelo, LLC operates Tangelo Images, a user interface application for creating interactive brand and user-generated photos. In addition, Tangelo, LLC launched Tangelo Tags within the Facebook app center to allow brand and individual users to create interactive and shoppable photos within Facebook's timeline. Tangelo, LLC has been recognized as a TAG Top 40 - Georgia's Most Innovative Companies.

11. Plaintiff is the current assignee of the Patent-in-Suit and has standing to bring this lawsuit, including the right to recover damages for past, present, and future infringement of the patent.

*B. Patent-in-Suit*

12. Mr. Mannik is the first listed co-inventor on the Patent-In-Suit, which is U.S. Patent No. 8,429,005 (the “‘005 Patent”). The ‘005 Patent was filed as application No. 10/459,397 on June 11, 2013. The ‘005 Patent is a continuation-in-part of application No. 09/468,687, filed on December 20, 1999, now U.S. Patent No. 6,535,889, which is a continuation-in-part of application No. 09/406,171, filed on September 23, 1999, now U.S. Patent No. 6,557,006. The earliest filing in the priority chain leading up to the ‘005 Patent is U.S. Patent Application No. 09/406,171, filed on Sep. 23, 1999.

13. The Abstract of the ‘005 Patent states the following:

Interactive electronic representations of advertising images published in visual media sources enable data about interest in an object or objects appearing in the advertising images to be collected. From comparing against aggregated data from interactions with interactive electronic representations, the effectiveness of displaying an object, such as representing a product or service, in a particular advertising image can be relatively measured.

14. As of the priority date of the ‘005 Patent, traditional visual media, such as print, *e.g.*, magazines, newspapers, catalogs, books, mailings, billboards, signs, paintings, posters and the like, and video sources, *e.g.*, television, motion pictures, video cassettes and discs, and the like, remained an important stimulus in everyday life, although the Internet was becoming an increasing source of information, entertainment and commerce. ‘005/1:33-39.

15. Despite the continued popularity of traditional visual media, the limitations of the medium become apparent when compared to today's Internet-based information sources, like the world-wide-web (“WWW” or “web”). ‘005/1:40-43. For example, traditional visual media may take much longer to produce than computer network-based content, and may have considerably greater

production costs. ‘005/1:43-46. Moreover, traditional visual media typically does not provide the depth of content permitted by electronic files, because traditional visual media cannot be associated with, or “hot-linked” to, additional sources of information like electronic files. ‘005/1:46-50. Accordingly, traditional visual media cannot provide the virtually infinite depth of content provided by electronic data on a computer network. ‘005/1:50-52.

16. For example, if a reader desires additional information regarding a parka a celebrity is wearing in a magazine photograph, the reader may turn to a web search engine for assistance, but without knowing the manufacturer of the parka or other information, any Internet search by the reader is likely to be futile. ‘005/1:61-66. Similarly, the reader may be unable to obtain information regarding furniture or other objects shown in the photographs with the article. ‘005/2:2-4. This inability to locate additional information about objects shown in traditional visual media sources can be extremely frustrating for a reader or viewer. ‘005/2:11-14.

17. Similar to traditional visual media, conventional visual media present in some electronic publications (including video sources) on the Internet, typically do not provide any detailed information about products shown in digital or electronic images within the electronic publication. ‘005/2:28-32. While such digital or electronic images may be “hot-linked” to corresponding Internet sites, such conventional visual media do not provide a break down of products forming the digital or electronic image contained within the electronic publication. ‘005/2:32-36. Conventional electronic publications generally do not provide instantaneous product descriptions and separate enlarged views of each of the products shown within the image. ‘005/2:37-40. For example, if the reader wants more information about the individual objects depicted in a skiing scene, such as an enlarged view of the skis or a complete description as to their identification and possible retail location or both, the reader may need to initiate an Internet or web search to ascertain

this type of product or service information. ‘005/2:40-49. Such an Internet search could be rather time consuming without any guarantee of success. ‘005/2:49-50.

18. Visual media sources also present problems to manufacturers, retailers, and advertisers that desire to receive feedback on the effectiveness of their visual media advertisements. ‘005/2:51-54. No objective gauge exists to measure the effectiveness of these advertisements relative to their being viewed by potential consumers, to their invoking interest in the goods or services, or in resulting in an actual sale of goods or services shown in the advertisements or resulting from the product placement. ‘005/2:57-62.

19. Therefore, in light of these problems, there is a need for a system and method for creating and displaying an interactive electronic representation of a corresponding visual media object that can easily associate a traditional visual media object, or conventional visual media objects, such as digital or electronic images contained within conventional electronic publications, to an interactive electronic representation of a visual media object. ‘005/2:63-3:3. There is a further need for a system and method creating an interactive electronic representation of a corresponding traditional visual media object that can “hot-link” objects in printed publications, television and movie scenes, and the like, to related electronic documents. ‘005/3:3-7. There is an additional need for a system and method for displaying an interactive electronic representation of a corresponding visual media object that can track demographic information regarding consumers of traditional visual media objects, such as magazines, newspapers, television programs and movies, and conventional visual media objects, such as electronic publications (including video sources) containing digital images. ‘005/3:7-15. There is a further need for a system and business method for using interactive electronic representations of media objects to provide advertising management services to manufacturers, retailers, catalog retailers, service providers, advertisers,

broadcasters, producers and publishers. ‘005/3:15-19. There is also a need for a system and business method for using interactive electronic representations of media objects to measure the effectiveness of advertisements in visual media relative to their being viewed by potential consumers, to their invoking interest in the goods or services, or in resulting in an actual sale of goods or services shown in the advertisements. ‘005/3:19-25.

20. The “Summary of the Invention” for the ‘005 Patent states in part as follows:

The present invention solves the problems described above by displaying an interactive electronic representation of a visual media object (an “IER”), such as a page in a magazine, newspaper, a digital image contained within an electronic publication, a still frame, particular image or clip from a television program, a frame, image or clip from a motion scene, or similar video sources, etc., that associates a visual media object with a unique identifier. The present invention advantageously allows a consumer of the visual media object, *i.e.*, the viewer or reader, to utilize the unique identifier to easily access the corresponding IER. The present invention also allows the consumer to quickly locate additional information regarding aspects of the visual media object by interacting with the IER using a computing device, like a personal computer or personal digital assistant.”

‘005/3:29-43.

21. The technology recited in the claims of the ‘005 Patent provides an inventive concept and does not claim an abstract idea. The inventive concept greatly enhances and facilitates technological methods, apparatuses, and media which comprise providing of electronic and interactive catalogs comprising replications of product images appearing in a corresponding physical catalogs, wherein the electronic and interactive replications include selectable portions corresponding with the image replications, and wherein selection of the selectable portions provides additional product information and enables a user to initiate an online purchase of the product.

22. The technology recited in the claims of the ‘005 patent improves the functioning of computers, it improves computer capabilities, and it improves over existing technological

processes, including with respect to electronic and interactive replications comprising selectable portions corresponding with the image replications, and wherein selection of the selectable portions provides additional product information and enables a user to initiate an online purchase of the product.

23. One inventive component of the '005 patent is improving electronic catalogs in ways that are necessarily rooted in computer technology to overcome problems specifically arising in the realm of computer networks, including the Internet. The claims recite an invention that was not merely a routine or conventional use of the Internet. The claimed invention was not practiced by others prior to the '005 invention, nor was it a well-known, fundamental economic or conventional business practice, nor was it a practice to which general-purpose computer components were added after the fact.

24. Claim 1 of the '005 Patent, which has some similarities with claims 14, 15, and 17, covers the following:

A method for providing to a user an interactive and electronic replication of at least a portion of a corresponding physical publication page, comprising:

- associating a page number of a physical publication page with an interactive and electronic replication of at least a portion of a physical publication page;
- the physical publication page having at least two different products appearing on the physical publication page;
- the page number appearing on the physical publication page along with the at least two different products;
- the page number and the two different products being visible on the physical publication page;
- receiving by a host computer comprising at least one computer processor an input representing the page number;
- providing from the host computer the interactive and electronic replication of the at least a portion of the physical publication page in response to receiving the input representing the page number;
- the interactive and electronic replication of the at least a portion of the physical publication page including duplications of the appearances of the at least two different products;
- the duplications of the appearances of the at least two different products being exact reproductions of the appearances of the at least two different products



contained within the physical publication page;  
the interactive and electronic replication enabling the user to obtain additional information on the at least two different products contained within the interactive and electronic replication; and  
wherein the user is able to see the interactive and electronic replication and the at least two different products in the physical publication page and can obtain the additional information on the at least two different products contained within the interactive and electronic replication of the at least a portion of the physical publication page by receiving the interactive and electronic replication.

25. Neither claim 1 nor any other claims of the '005 Patent is directed to an abstract idea. Neither claim 1 nor any other claims of the '005 Patent preempt any abstract idea or otherwise preempt anything that would render them unpatentable. For example, one is free to practice the prior art of record and the prior art referenced in the specification. The '005 claims do not improperly inhibit further discovery by tying up any building blocks of human ingenuity or technological work.

26. Claims 1 through 21 of the '005 Patent cover, among other things, specific applications of specific methods, specific apparatuses, and specific computer readable media for providing an electronic and interactive replication of product images appearing in a corresponding physical publication page, including in order to achieve the aims of the invention as stated above, and to overcome the shortcomings in the prior art, including prior art physical print media and advertising methods, apparatuses, and media, as noted above. These claims comprise, among other things, specific applications or improvements to technologies in the marketplace, including improvements to the existing physical print media and advertising methods, apparatuses, and media. Properly understood, the claimed technology constitutes the application of certain ideas, and it necessitates the use of discrete computer hardware and software components configured and programmed in a particular way that enable performance of the specified functions.

27. Further, including when claim 1 is viewed as a whole, there are sufficient unconventional,

non-routine, novel, meaningful, and inventive claim limitations to claim 1 that are sufficient to ensure that the claim in practice amounts to significantly more than merely a patent on any abstract idea or patent ineligible concept. Those unconventional, non-routine, novel, meaningful, and inventive claim limitations comprise the following: associating a page number of a physical publication page with an interactive and electronic replication of at least a portion of a physical publication page, wherein the physical publication page has at least two different products appearing on the physical publication page, wherein the page number appears on the physical publication page along with the at least two different products, wherein the page number and the two different products are visible on the physical publication page; receiving by a host computer comprising at least one computer processor an input representing the page number; providing from the host computer the interactive and electronic replication of the at least a portion of the physical publication page in response to receiving the input representing the page number, wherein the interactive and electronic replication of the at least a portion of the physical publication page includes duplications of the appearances of the at least two different products, wherein the duplications of the appearances of the at least two different products being exact reproductions of the appearances of the at least two different products contained within the physical publication page, wherein the interactive and electronic replication enables the user to obtain additional information on the at least two different products contained within the interactive and electronic replication; and wherein the user is able to see the interactive and electronic replication and the at least two different products in the physical publication page and can obtain the additional information on the at least two different products contained within the interactive and electronic replication of the at least a portion of the physical publication page by receiving the interactive and electronic replication.

28. Further, claim 1 can only be implemented by a special purpose computer, which is integral to the claimed invention, facilitating the process in a way that a person making calculations or computations could not, including that such calculations or computations could not be performed solely in the human mind. A special computer is integral to claim 1, including because special programming is necessary to perform the claimed steps. Further, claim 1 is necessarily rooted in computer technology because computer technology is the only way to perform the claimed steps.

29. The '005 Patent claims cannot be practiced by a human alone and there exists no human analogue to the methods claimed in the '005 Patent. The claims are specifically directed to, *inter alia*, the electronic and interactive replication of product images appearing in a corresponding physical publication page, wherein the electronic and interactive replications include selectable portions corresponding with duplications of the appearance of the product, and wherein selection of the selectable portions provides additional product information and enables a user to initiate an online purchase of the product. These things exist only in the context of computers.

30. The invention of claim 1 uses computer technology to overcome the shortcomings of prior art methods, apparatuses, and media, including state of the art physical print media and advertising methods, apparatuses, and media, which lacked, among other things, the ability to perform the foregoing steps. As such, claim 1 overcomes a technical problem and effects an improvement to a specific technology or technical field. One such inventive component of the '005 Patent is improving electronic catalogs in ways that are necessarily rooted in computer technology to overcome problems specifically arising in the realm of computer networks, including the Internet. The claims recite an invention that was not merely a routine or conventional use of the Internet.

31. Claim 1 is not directed to a longstanding commercial practice nor does it merely apply generic or general purposes computers to prior art systems or methods. Including as noted above,

prior art methods, apparatuses, and media were incapable of the functionality of the method of claim 1. The technology claimed in the '005 Patent does not preempt all types of electronic catalogs or anything else. For example, the prior art cited on the face of the '005 Patent remains available for practice by Defendant, and the '005 Patent claims do not preempt practice of those prior art methods.

32. Dependent claim 2 of the '005 Patent has many similarities with claim 1, and it is valid for at least the same reasons. Claim 2 also contains additional unconventional, non-routine, novel, meaningful, and inventive claim limitations, including when the claim is viewed as a whole, which comprise the additional information about the first product including the location of an online retailer determined by the host computer from consulting a product availability database, wherein the database is stored on a non-transitory storage medium communicatively coupled to the host computer.

33. Dependent claim 3 of the '005 Patent has many similarities with claim 1, and it is valid for at least the same reasons. Claim 3 also contains additional unconventional, non-routine, novel, meaningful, and inventive claim limitations, including when the claim is viewed as a whole, which comprise the host computer collecting purchase information comprising payment and delivery information from a purchase request for a product of the at least two different products.

34. Dependent claim 4 of the '005 Patent has many similarities with claims 1 and 3, and it is valid for at least the same reasons. Claim 4 also contains additional unconventional, non-routine, novel, meaningful, and inventive claim limitations, including when the claim is viewed as a whole, which comprise the host computer sending collected user purchase information for a product of the at least two different products to an online retailer.

35. Dependent claim 5 of the '005 Patent has many similarities with claim 1, and it is valid for

at least the same reasons. Claim 5 also contains additional unconventional, non-routine, novel, meaningful, and inventive claim limitations, including when the claim is viewed as a whole, which comprise the host computer processing a user's online purchase request of a product of the at least two different products received in response to a user's interaction with the interactive and electronic replication.

36. Dependent claim 6 of the '005 Patent has many similarities with claim 1, and it is valid for at least the same reasons. Claim 6 also contains additional unconventional, non-routine, novel, meaningful, and inventive claim limitations, including when the claim is viewed as a whole, which comprise storing a user profile and information obtained from the user's interaction with the interactive and electronic replication on a non-transitory storage medium.

37. Dependent claim 7 of the '005 Patent has many similarities with claim 1, and it is valid for at least the same reasons. Claim 7 also contains additional unconventional, non-routine, novel, meaningful, and inventive claim limitations, including when the claim is viewed as a whole, which comprise an internet address being visible with the page number on the publication page and the input representing the page number being made to the host computer through a website accessed at the internet address.

38. Dependent claim 8 of the '005 Patent has many similarities with claim 1, and it is valid for at least the same reasons. Claim 8 also contains additional unconventional, non-routine, novel, meaningful, and inventive claim limitations, including when the claim is viewed as a whole, which comprise the additional information for the first product of the at least two different products including the display of an additional graphic object associated with the first product.

39. Dependent claim 9 of the '005 Patent has many similarities with claim 1, and it is valid for at least the same reasons. Claim 9 also contains additional unconventional, non-routine, novel,

meaningful, and inventive claim limitations, including when the claim is viewed as a whole, which comprise the additional information for the first product of the at least two different products including presentation of a multimedia object associated with the first product.

40. Dependent claim 10 of the '005 Patent has many similarities with claim 1, and it is valid for at least the same reasons. Claim 10 also contains additional unconventional, non-routine, novel, meaningful, and inventive claim limitations, including when the claim is viewed as a whole, which comprise the additional information for the first product of the at least two different products including the display of text associated with the first product.

41. Dependent claim 11 of the '005 Patent has many similarities with claim 1, and it is valid for at least the same reasons. Claim 11 also contains additional unconventional, non-routine, novel, meaningful, and inventive claim limitations, including when the claim is viewed as a whole, which comprise the host computer collecting purchase information comprising payment and delivery information from a purchase request for a product of the at least two different products.

42. Dependent claim 12 of the '005 Patent has many similarities with claims 1 and 11, and it is valid for at least the same reasons. Claim 12 also contains additional unconventional, non-routine, novel, meaningful, and inventive claim limitations, including when the claim is viewed as a whole, which comprise the host computer receiving the user's interaction with a plurality of interactive and electronic replications from a plurality of portions of a plurality of physical publication pages from different physical publications.

43. Dependent claim 13 of the '005 Patent has many similarities with claim 1, and it is valid for at least the same reasons. Claim 13 also contains additional unconventional, non-routine, novel, meaningful, and inventive claim limitations, including when the claim is viewed as a whole, which comprise the interactive and electronic replication including a first selectable portion

corresponding with duplication of the appearance of a first product of the at least two different products, wherein selection of the first selectable portion provides additional product information about the first product and enables a user to initiate an online purchase of the first product; and including a second selectable portion corresponding with duplication of the appearance of a second product of the at least two different products, wherein selection of the second selectable portion provides additional product information about the second product and enables a user to initiate online purchase of the second product.

44. Independent claim 14 of the '005 Patent has some similarities with claims 1, 15, and 17, and with other claims as well, and it is valid for at least the same reasons. Claim 14 also contains additional unconventional, non-routine, novel, meaningful, and inventive claim limitations, including when the claim is viewed as a whole, comprising the physical publication page having an image with at least two different products appearing on the physical publication page and forming part of the image.

45. Independent claim 15 of the '005 Patent has some similarities with claims 1, 14, and 17, and with other claims as well, and it is valid for at least the same reasons. Claim 15 also contains additional unconventional, non-routine, novel, meaningful, and inventive claim limitations, including when the claim is viewed as a whole, comprising a host computer comprising at least one computer processor that associates a page number of a physical publication page with an electronic and interactive replication of at least a portion of the physical publication page; and a web server application executed by the host computer that provides the electronic and interactive representation to a computing device of a user and in response to receiving input representing the page number.

46. Claim 15 of the '005 Patent covers, among other things, a system comprising specific

applications of specific methods by a specialized computer of providing an electronic and interactive replication of a product images appearing in a corresponding physical publication page, including in order to achieve the aims of the invention as stated above, and to overcome the shortcomings in the prior art, including prior art physical print media and advertising methods, apparatuses, and media, as noted above. Claim 15 comprises, among other things, specific applications or improvements to technologies in the marketplace, including improvements to the existing physical print media and advertising methods, apparatuses, and media. Properly understood, the claimed technology constitutes the application of certain ideas, and it necessitates the use of discrete computer hardware and software components configured and programmed in a particular way that enable performance of the specified functions.

47. Further, including when claim 15 is viewed as a whole, there are sufficient unconventional, non-routine, novel, meaningful, and inventive claim limitations to claim 1 that are sufficient to ensure that the claim in practice amounts to significantly more than merely a patent on any abstract idea or patent ineligible concept. Those unconventional, non-routine, novel, meaningful, and inventive claim limitations comprise the following: a host computer comprising at least one computer processor that associates a page number of a physical publication page with an electronic and interactive replication of at least a portion of the physical publication page, wherein the physical publication page has at least two different products appearing on the physical publication page with the page number, wherein the electronic and interactive replication comprises exact duplications of the appearances of the at least two different products, wherein the electronic and interactive replication includes a first selectable portion corresponding with duplication of the appearance of a first product of the at least two different products and wherein selection of the first selectable portion provides additional product information about the first product and enables a



user to initiate an online purchase of the first product, and wherein the electronic and interactive replication includes a second selectable portion corresponding with duplication of the appearance of a second product of the at least two different products and wherein selection of the second selectable portion provides additional product information about the second product and enables a user to initiate online purchase of the second product; and a web server application executed by the host computer that provides the electronic and interactive representation to a computing device of a user and in response to receiving input representing the page number.

48. Further, in addition to what has been stated above, claim 15 can only be implemented by a special purpose computer, *e.g.*, a host computer, which is integral to the claimed invention, facilitating the process in a way that a person making calculations or computations could not. A special computer is integral to claim 15, including because special programming is necessary to perform the claimed steps, including as necessary for a web server application executed by the host computer. Further, claim 15 is necessarily rooted in computer technology because computer technology is explicitly recited in the claim elements.

49. In addition to what has been stated above, the invention of claim 15 uses computer technology to overcome the shortcomings of prior art methods, apparatuses, and media, including state of the art physical print media and advertising methods, apparatuses, and media, which lacked, among other things, the ability to perform the foregoing steps. As such, claim 15 overcomes a technical problem and effects an improvement to a specific technology or technical field. One such inventive component of the '005 Patent is improving electronic catalogs in ways that are necessarily rooted in computer technology to overcome problems specifically arising in the realm of computer networks, including the Internet. The claims recite an invention that was not merely a routine or conventional use of the Internet.

50. In addition to what has been stated above, claim 15 is not directed to a longstanding commercial practice nor does it merely apply generic or general purposes computers to prior art systems or methods. Including as noted above, prior art methods, apparatuses, and media were incapable of the functionality of the method of claim 15. The technology claimed in the '005 Patent does not preempt all types of host computers which comprise electronic catalogs or anything else. For example, the prior art cited on the face of the '005 Patent remains available for practice by Defendant, and the '005 Patent claims do not preempt practice of those prior art methods.

51. Dependent claim 16 of the '005 Patent has many similarities with claim 15, and it is valid for at least the same reasons. Claim 16 also contains additional unconventional, non-routine, novel, meaningful, and inventive claim limitations, including when the claim is viewed as a whole, which comprise the computing device of a user being a mobile computing device.

52. Independent claim 17 of the '005 Patent has some similarities with claims 1, 14, and 15, and with other claims as well, and it is valid for at least the same reasons. Claim 17 also contains additional unconventional, non-routine, novel, meaningful, and inventive claim limitations, including when the claim is viewed as a whole, comprising a non-transitory computer-readable medium having instructions stored thereon which when executed cause a data processing system to associate a page number of a physical publication page with an interactive and electronic replication of at least a portion of the physical publication page; process a received input representing the page number; and provide the interactive and electronic replication of the at least a portion of the publication page in response to receiving the input representing page number.

53. Claim 17 of the '005 Patent covers, among other things, non-transitory computer-readable media executed on a data processing system comprising specific applications of specific methods by a specialized computer of providing an electronic and interactive replication of a product images

appearing in a corresponding physical publication page, including in order to achieve the aims of the invention as stated above, and to overcome the shortcomings in the prior art, including prior art physical print media and advertising methods, apparatuses, and media, as noted above. Claim 17 comprises, among other things, specific applications or improvements to technologies in the marketplace, including improvements to the existing physical print media and advertising methods, apparatuses, and media. Properly understood, the claimed technology constitutes the application of certain ideas, and it necessitates the use of discrete computer hardware and software components configured and programmed in a particular way that enable performance of the specified functions, including through non-transitory computer-readable media having instructions stored thereon.

54. Further, including when claim 17 is viewed as a whole, there are sufficient unconventional, non-routine, novel, meaningful, and inventive claim limitations to claim 1 that are sufficient to ensure that the claim in practice amounts to significantly more than merely a patent on any abstract idea or patent ineligible concept. Those unconventional, non-routine, novel, meaningful, and inventive claim limitations comprise the following: a non-transitory computer-readable medium having instructions stored thereon which when executed cause a data processing system to associate a page number of a physical publication page with an interactive and electronic replication of at least a portion of the physical publication page; wherein the physical publication page has at least two different products appearing on the physical publication page; wherein the page number appears on the physical publication page along with the at least two different products; and wherein the page number and the two different products are visible on the physical publication page; process a received input representing the page number; and provide the interactive and electronic replication of the at least a portion of the publication page in response to

receiving the input representing page number; wherein the interactive and electronic replication of the at least a portion of the physical publication page includes duplications of the appearances of the at least two different products; wherein the duplications of the appearances of the at least two different products being exact reproductions of the appearances of the at least two different products contained within the physical publication page; wherein the interactive and electronic replication enables the user to obtain additional information beyond information from the physical publication page on the at least two different products contained within the interactive and electronic replication; and wherein a user is able to see the interactive and electronic replication and at least two different products in the physical publication page and can obtain the additional information on the at least two different products contained within the interactive and electronic replication of the at least a portion of the physical publication page by receiving the interactive and electronic replication.

55. Further, in addition to what has been stated above, claim 17 can only be implemented by a special purpose computer which is integral to the claimed invention, facilitating the process in a way that a person making calculations or computations could not. A special computer is integral to claim 17, including because special programming is necessary to perform the claimed steps, including non-transitory computer-readable media having instructions stored thereon to cause a data processing system to perform the specific steps of claim 17. Further, claim 17 is necessarily rooted in computer technology because computer technology is explicitly recited in the claim elements, including non-transitory computer-readable media having instructions stored thereon.

56. In addition to what has been stated above, the invention of claim 17 uses computer technology to overcome the shortcomings of prior art methods, apparatuses, and media, including state of the art physical print media and advertising methods, apparatuses, and media, which

lacked, among other things, the ability to perform the foregoing steps. As such, claim 17 overcomes a technical problem and effects an improvement to a specific technology or technical field. One such inventive component of the '005 Patent is improving electronic catalogs in ways that are necessarily rooted in computer technology to overcome problems specifically arising in the realm of computer networks, including the Internet. The claims recite an invention that was not merely a routine or conventional use of the Internet.

57. In addition to what has been stated above, claim 17 is not directed to a longstanding commercial practice nor does it merely apply generic or general purposes computers to prior art systems or methods. Including as noted above, prior art methods, apparatuses, and media were incapable of the functionality of the method of claim 17. The technology claimed in the '005 Patent does not preempt all types of host computers which comprise electronic catalogs or anything else. For example, the prior art cited on the face of the '005 Patent remains available for practice by Defendant, and the '005 Patent claims do not preempt practice of those prior art methods.

58. Dependent claims 18-21 of the '005 Patent have many similarities with claim 17, and they are valid for at least the same reasons. Claims 18-21 also contains additional unconventional, non-routine, novel, meaningful, and inventive claim limitations, including when the claims are viewed as a whole, which comprise various additional instructions to be executed on the data processing system, including providing the location of an online retailer (*see* claim 18); collecting user purchase information (*see* claim 19); processing a user's online purchase request (*see* claim 20); and sending collected user purchase information to an online retailer (*see* claim 21).

#### **COUNT I – INFRINGEMENT OF U.S. PATENT NO. 8,429,005**

59. Plaintiff refers to and incorporates herein the allegations in the above paragraphs.

60. The '005 Patent, entitled "Method for Determining Effectiveness of Display of Objects in

Advertising Images,” was duly and legally issued by the USPTO on April 23, 2013 after full and fair examination.

61. The claims of the ‘005 Patent cover, *inter alia*, methods, apparatuses, and computer readable media, including associated with websites and/or apps, for providing an electronic and interactive replication of product images appearing in a corresponding physical publication page comprising: a host computer that associates a page number of a physical publication page with an electronic and interactive replication of at least a portion of the physical publication page, wherein the physical publication page has products appearing thereon with the page number, wherein the electronic and interactive replication comprises exact duplications of the appearances of the products, wherein the electronic and interactive replication includes selectable portions corresponding with duplication of the appearance of the products, and wherein selection of the selectable portions provides additional product information about the products and enables a user to initiate an online purchase of products, and an application executed by the host computer that provides the electronic and interactive representation to a computing device of a user and in response to receiving input representing the page number.

62. Defendant has infringed and is now infringing, including literally, jointly, and/or equivalently, the ‘005 patent, including claims 1, 3, 5-11, 13-17, and 19-20, in this judicial district, the State of Texas, and elsewhere in the United States, in violation of 35 U.S.C. § 271 through actions comprising the practicing, making, using, offering for sale, selling, and/or hosting without authority from Plaintiff, methods and computer readable media for methods, apparatuses, and computer readable media, including associated with websites and/or apps, for providing an electronic and interactive replication of product images appearing in a corresponding physical publication page comprising: a host computer that associates a page number of a physical

publication page with an electronic and interactive replication of at least a portion of the physical publication page, wherein the physical publication page has products appearing thereon with the page number, wherein the electronic and interactive replication comprises exact duplications of the appearances of the products, wherein the electronic and interactive replication includes selectable portions corresponding with duplication of the appearance of the products, and wherein selection of the selectable portions provides additional product information about the products and enables a user to initiate an online purchase of products, and an application executed by the host computer that provides the electronic and interactive representation to a computing device of a user and in response to receiving input representing the page number.

63. Defendant infringes the '005 patent by and through at least its practicing, making, and using of electronic catalogs at [www.brooksbrothers.com](http://www.brooksbrothers.com), including the electronic catalogs at <http://www.brooksbrothers.com/on/demandware.store/Sites-brooksbrothers-Site/default/OnlineCatalog-Show>, and the Brooks Brothers iCatalog Mobile Application (including at least the Brooks Brothers iCatalog iOS Application).

64. On information and belief, Defendant has had at least constructive notice of the '005 patent pursuant to the Patent Act. Plaintiff reserves the right to take discovery regarding Defendant's first actual notice of the '005 patent.

65. Each of Defendant's aforesaid activities have been without authority and/or license from Plaintiff.

66. By way of its infringing activities, Defendant has caused and continue to cause Plaintiff to suffer damages, and Plaintiff is entitled to recover from Defendant the damages sustained by Plaintiff as a result of Defendant's wrongful acts in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court

under 35 U.S.C. § 284.

67. Defendant's infringement of Plaintiff's rights under the Patent-in-Suit will continue to damage Plaintiff, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

68. Plaintiff also requests that the Court make a finding that this is an exceptional case entitling Plaintiff to recover their attorneys' fees and costs pursuant to 35 U.S.C. § 285.

### **JURY DEMAND**

69. Plaintiff hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure on all issues so triable.

### **PRAYER FOR RELIEF**

70. Plaintiff respectfully requests that the Court find in their favor and against Defendant, and that the Court grant Plaintiff the following relief:

- A. An adjudication that one or more claims of the Patent-in-Suit has been directly infringed, either literally and/or under the doctrine of equivalents, by Defendant;
- B. An award to Plaintiff of damages adequate to compensate Plaintiff for Defendant's past infringement, together with pre-judgment and post-judgment interest, and any continuing or future infringement through the date such judgment is entered, including interest, costs, expenses, and an accounting of all infringing acts including, but not limited to, those acts not presented at trial;
- C. A grant of preliminary and permanent injunction pursuant to 35 U.S.C. § 283, enjoining Defendant and all persons, including its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert or participation therewith, from making, using, offering to sell, or selling in the United



States or importing into the United States any methods, systems, or computer readable media that infringe any claim of the Patent-in-Suit, or contributing to or inducing the same by others from further acts of infringement with respect to the claims of the Patent-in-Suit;

- D. That this Court declare that Defendant's infringement has been, and continues to be, willful, including that Defendant acted to infringe the Patent-in-Suit despite an objectively high likelihood that its actions constituted infringement of a valid patent and, accordingly, award enhanced damages, including treble damages, pursuant to 35 U.S.C. § 284;
- E. That this Court declare this to be an exceptional case and award Plaintiff reasonable attorneys' fees and costs in accordance with 35 U.S.C. § 285; and
- F. A judgment and order requiring Defendant to pay Plaintiff their damages, costs, expenses, fees, and prejudgment and post-judgment interest for Defendant's infringement of the Patent-in-Suit as provided under 35 U.S.C. §§ 284 and/or 285; and
- G. Any and all further relief for which Plaintiff may show itself justly entitled that this Court deems just and proper.

May 31, 2016

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by electronic mail, facsimile transmission and/or first class mail on this same date.

May 31, 2016

/s/ John J. Edmonds  
John J. Edmonds