

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

EMG TECHNOLOGY, LLC,

Plaintiff,

v.

ETSY, INC.,

Defendant.

Case No. 6:16-CV-484

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff EMG Technology, LLC (“EMG”) alleges as follows for its complaint against Defendant Etsy, Inc. (“Etsy”):

JURISDICTION AND VENUE

1. This is an action for patent infringement in violation of the Patent Act of the United States, 35 U.S.C. §§ 1 et seq.
2. This Court has original and exclusive subject matter jurisdiction over the patent infringement claims for relief under 28 U.S.C. §§ 1331 and 1338(a).
3. The Court has personal jurisdiction over Etsy because Etsy has transacted and is transacting business in the Eastern District of Texas that includes, but is not limited to, the use, and promotion of the use of, products and systems that practice the subject matter claimed in the patents involved in this action.
4. Venue is proper in this district under 28 U.S.C. § 1391(b-c) and 1400(b) because a substantial part of the events or omissions giving rise to the claims occurred in this District

where Etsy has done business and committed infringing acts and continues to do business and to commit infringing acts.

PARTIES

5. EMG is a limited liability company organized under the laws of the State of California with its principal place of business in Los Angeles, California.

6. EMG is informed and believes, and on that basis alleges, that Etsy is a Delaware corporation with its principal place of business at 55 Washington Street, Suite 512, Brooklyn, New York 11201, and that it has conducted business in this judicial district. EMG is further informed and believes, and on that basis alleges, that Etsy derives a significant portion of its revenue from the promotion and/or sale of its products and services through its systems, web servers, and software associated with its Internet web sites, including at least <http://www.etsy.com> (“Accused Instrumentalities”).

7. EMG is informed and believes, and on that basis alleges, that, at all times relevant hereto, Etsy has done and continues to do business in this judicial district.

PATENTS

8. United States Patent No. 6,600,497 (the “‘497 Patent”) entitled “Apparatus and Method to Navigate Interactive Television Using Unique Inputs with a Remote Control” was duly and legally issued on July 29, 2003. A true and correct copy of the ‘497 Patent is attached hereto as Exhibit “A” and incorporated herein by this reference. By a series of assignments, EMG is now the assignee of the entire right, title and interest in and to the ‘497 Patent, including all rights to enforce the ‘497 Patent and to recover for infringement. The ‘497 Patent is valid and in force.

9. United States Patent No. 7,194,698 (the “‘698 Patent”) entitled “Method to Advertise and Search on Television for Web Content Using A Simplified Interface” was duly and legally issued on March 20, 2007. A true and correct copy of the ‘698 Patent is attached hereto as Exhibit “B” and incorporated herein by this reference. By a series of assignments, EMG is now the assignee of the entire right, title and interest in and to the ‘698 Patent, including all rights to enforce the ‘698 Patent and to recover for infringement. The ‘698 Patent is valid and in force.

FIRST CLAIM FOR RELIEF

Infringement of the ‘497 Patent

10. EMG refers to and incorporates herein by reference paragraphs 1-9.

11. Etsy, by the acts complained of herein, and by making, using, selling, and/or offering for sale in the United States, including in the Eastern District of Texas, instrumentalities embodying the invention, has in the past, does now, and continues to infringe the ‘497 Patent directly, contributorily and/or by inducement, literally and/or under the doctrine of equivalents, in violation of 35 U.S.C. § 271.

12. At least since the filing of this complaint, Etsy has had actual knowledge of the ‘497 patent.

13. On information and belief, Etsy has directly infringed the ‘497 patent by making, using, supplying, selling, or offering for sale the Accused Instrumentalities. For example, claim 20 of the ‘497 patent recites: “An apparatus comprising: a processor; a memory coupled to the processor, the memory storing code that defines a portion of a multidimensional navigation matrix; a network interface to receive a unique input corresponding to a cell of a current two-dimensional layer of the navigation matrix having a first plurality of primary navigation options,

the processor to serve across the network a next deep layer of the matrix having a second plurality of primary navigation options up to a maximum depth in response to an input.” ‘497 patent at col. 10, ll. 44-56. By way of non-limiting example, Etsy directly infringes claims of the ‘497 patent, including at least claim 20, by making and using server(s) that support its Mobile sites including <http://www.etsy.com> (“Etsy.com”). By way of non-limiting example, as of at least May 12, 2016, Etsy’s server(s) include a processor and memory that stores code that defines a portion of a multidimensional navigation matrix. A defined portion of a multidimensional navigation matrix (for example, the “Shop for gifts” portion of the Etsy.com mobile site) can be displayed on an iPhone. Etsy’s server(s) are connected to the Internet, and thus necessarily have a network interface. Etsy’s server(s) receive a unique input corresponding to a cell of a current two-dimensional layer of the navigation matrix (such as, for example, a touch on an iPhone touchscreen corresponding to “Best of spring: Under \$30,” which is one of a plurality of primary navigation options). The processor of Etsy’s server(s) serves across the Internet a next deep layer of the matrix (for example, content responsive to the unique input corresponding to the “Best of spring: Under \$30” navigation option), which has a second plurality of primary navigation options (such as, as of May 12, 2016, primary navigation options “iPhone 6 Case Marble” and “Porcelain Cherry Basket”), up to a maximum depth in response to an input.

14. On information and belief, Etsy has knowingly and actively induced the infringement of one or more of the ‘497 patent claims by, *inter alia*, marketing and promoting the Accused Instrumentalities, knowingly and intending that the use of such instrumentalities by Etsy customers and by users infringes the ‘497 patent. For example, Etsy intends to induce such infringement by, among other things, promoting users, via Etsy’s user guides, to display and

navigate its mobile websites, including at least Etsy.com, knowing that the display and navigation of Etsy's mobile websites on a user's portable device or cell phone infringes one or more claims of the '497 Patent. *See, e.g.*, Exhibit C (screenshot of <https://blog.etsy.com/news/2011/listing-details-and-checkout-going-mobile> as of May 17, 2016) (Page on etsy.com promoting users to access Etsy's mobile site on devices such as "iPhones, iPod touches, and Android phones" including because optimized pages of Etsy's mobile site, *inter alia*, "are meant to . . . fit on your phone's screen properly" and are "easy to use with your fingers."); Exhibit D (screenshot of article titled "Top 5 Ways to Attract Etsy's Growing Mobile Buyers," at <https://www.etsy.com/seller-handbook/article/top-5-ways-to-attract-etsys-growing/22898004459> as of May 17, 2016) (instructing users on how to optimize their pages on Etsy.com for display on mobile devices, including by "[u]sing a smartphone or tablet as a research tool, browse your shop [on Etsy.com] with the mindset of a potential customer.").

15. On information and belief, Etsy has contributed to the infringement of the '497 patent by, *inter alia*, marketing and promoting products. Defendant has used and promoted within the United States the Accused Instrumentalities, which are not staple articles or commodities of commerce suitable for substantial non-infringing use, and are known by Etsy to be especially made or especially adapted to infringe the '497 patent. For example, Etsy's mobile site and supporting system(s), which defines and displays a two-dimensional or multidimensional layer of a navigation matrix, is a component of a patented machine, manufacture, or combination or apparatus for use in practicing a patent process. Further, Etsy's mobile site and supporting system(s) is a material part of the process employed by Etsy's users and is not a staple article or commodity of commerce suitable for substantial non-infringing use. As a result, Etsy's Accused

Instrumentalities have been used by its customers and users to infringe the '497 patent. Etsy continues to engage in acts of contributory infringement of the '497 patent.

16. By reason of the acts of Etsy alleged herein, EMG has suffered damage in an amount to be proved at trial.

17. Etsy threatens to continue to engage in the acts complained of herein and, unless restrained and enjoined, will continue to do so, all to EMG's irreparable injury. It would be difficult to ascertain the amount of compensation that would afford EMG adequate relief for such future and continuing acts, and a multiplicity of judicial proceedings would be required. EMG does not have an adequate remedy at law to compensate it for the injuries threatened.

SECOND CLAIM FOR RELIEF

Infringement of the '698 Patent

18. EMG refers to and incorporates herein by reference paragraphs 1-17.

19. Etsy, by the acts complained of herein, and by making, using, selling, and/or offering for sale in the United States, including in the Eastern District of Texas, instrumentalities embodying the invention, has in the past, does now, and continues to infringe the '698 Patent directly, contributorily and/or by inducement, literally and/or under the doctrine of equivalents, in violation of 35 U.S.C. § 271.

20. At least since the filing of this complaint, Etsy has had actual knowledge of the '698 patent.

21. On information and belief, Etsy has directly infringed the '698 patent by making, using, supplying, selling, or offering for sale the Accused Instrumentalities. For example, claim 23 of the '698 patent recites: "A machine-readable medium having program code stored thereon which, when executed by a machine, causes the machine to perform a method, the method

comprising: displaying one or more advertisements on a display; receiving a user selection of a displayed advertisement; and displaying content accessed via the internet, wherein the displayed content is associated with the selected advertisement, and wherein the content accessed via the internet is formatted for navigation with unique inputs.” ‘698 patent at col. 10, l. 64 – col. 11, l. 7. By way of non-limiting example, Etsy directly infringes claims of the ‘698 patent, including at least claim 23, by making and using server(s) that support its Mobile sites including Etsy.com. For example, as of at least May 12, 2016, Etsy’s server(s) have a machine-readable medium that stores program code which, when executed by a machine (for example, an iPhone or other mobile device), causes the machine to perform a method. The program code on Etsy’s server(s) causes a machine (such as an iPhone) to display one or more advertisements on a display (for example, a “Best of spring: Under \$30” advertisement on Etsy.com as viewed on an iPhone on May 12, 2016). The program code on Etsy’s server(s) also causes a machine to receive a user selection of a displayed advertisement and display content that is associated with the selected advertisement, formatted for navigation accessed via unique inputs, and accessed via the internet. For example, as of at least May 12, 2016, Etsy’s program code, accessible via Etsy.com, causes an iPhone to receive a user’s touch on a touchscreen that corresponds to the “Best of spring: Under \$30” and then display content that is associated with “Best of spring: Under \$30”, formatted for navigation with unique inputs, and accessed via the internet.

22. On information and belief, Etsy has knowingly and actively induced the infringement of one or more of the ‘698 patent claims by, *inter alia*, marketing and promoting the Accused Instrumentalities, knowingly and intending that the use of such instrumentalities by Etsy customers and by users infringes the ‘698 patent. For example, Etsy intends to induce such infringement by, among other things, promoting users, via Etsy’s user guides, to display and

navigate its mobile websites, including at least Etsy.com, knowing that the display and navigation of Etsy's mobile websites on a user's portable device or cell phone causes the portable device or cell phone to store and execute Etsy's program code, thereby infringing one or more claims of the '698 Patent. *See, e.g.*, Exhibit C (screenshot of <https://blog.etsy.com/news/2011/listing-details-and-checkout-going-mobile> as of May 17, 2016) (Page on etsy.com promoting users to access Etsy's mobile site on devices such as "iPhones, iPod touches, and Android phones" including because optimized pages of Etsy's mobile site, *inter alia*, "are meant to . . . fit on your phone's screen properly" and are "easy to use with your fingers."); Exhibit D (screenshot of article titled "Top 5 Ways to Attract Etsy's Growing Mobile Buyers," at <https://www.etsy.com/seller-handbook/article/top-5-ways-to-attract-etsys-growing/22898004459> as of May 17, 2016) (instructing users on how to optimize their pages on Etsy.com for display on mobile devices, including by "[u]sing a smartphone or tablet as a research tool, browse your shop [on Etsy.com] with the mindset of a potential customer.").

23. On information and belief, Etsy has contributed to the infringement of the '698 patent by, *inter alia*, marketing and promoting products. Defendant has used and promoted within the United States the Accused Instrumentalities, which are not staple articles or commodities of commerce suitable for substantial non-infringing use, and are known by Etsy to be especially made or especially adapted to infringe the '698 patent. For example, Etsy's mobile site and supporting server(s), which displays advertisements and through which users can select advertisements, is a component of a patented machine, manufacture, or combination or apparatus for use in practicing a patent process. Further, Etsy's mobile site and supporting system(s) is a material part of the process employed by Etsy's users and is not a staple article or commodity of commerce suitable for substantial non-infringing use. As a result, Etsy's Accused

Instrumentalities have been used by its customers and users to infringe the '698 patent. Etsy continues to engage in acts of contributory infringement of the '698 patent.

24. By reason of the acts of Etsy alleged herein, EMG has suffered damage in an amount to be proved at trial.

25. Etsy threatens to continue to engage in the acts complained of herein and, unless restrained and enjoined, will continue to do so, all to EMG's irreparable injury. It would be difficult to ascertain the amount of compensation that would afford EMG adequate relief for such future and continuing acts, and a multiplicity of judicial proceedings would be required. EMG does not have an adequate remedy at law to compensate it for the injuries threatened.

JURY DEMAND

26. EMG demands a jury trial on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, EMG prays for relief as follows:

- A. For an order finding that the '497 and '698 patents are valid and enforceable;
- B. For an order finding that Etsy has infringed the '497 and '698 patents directly, contributorily and/or by inducement, in violation of 35 U.S.C. § 271;
- C. For an order temporarily, preliminarily and permanently enjoining Etsy, its officers, directors, agents, servants, affiliates, employees, subsidiaries, divisions, branches, parents, attorneys, representatives, privies, and all others acting in concert or participation with any of them, from infringing the '497 and '698 patents directly, contributorily and/or by inducement, in violation of 35 U.S.C. § 271;

D. For an order directing Etsy to file with the Court, and serve upon EMG's counsel, within thirty (30) days after entry of the order of injunction, a report setting forth the manner and form in which it has complied with the injunction;

E. For an order awarding EMG general and/or specific damages adequate to compensate EMG for the infringement by Etsy, including a reasonable royalty and/or lost profits, in amounts to be fixed by the Court in accordance with proof, including enhanced and/or exemplary damages, as appropriate, as well as all of the profits or gains of any kind made by Etsy from its acts of patent infringement;

F. For an order awarding EMG pre-judgment interest and post-judgment interest at the maximum rate allowed by law;

G. For an order requiring an accounting of the damages to which EMG is found to be entitled;

H. For an order declaring this to be an exceptional case pursuant to 35 U.S.C. § 285 and awarding EMG its attorneys' fees;

I. For an order awarding EMG its costs of court; and

J. For an order awarding EMG such other and further relief as the Court deems just and proper.

DATED: June 2, 2016

Respectfully Submitted,

By: /s/ Charles Ainsworth

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