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10

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 CRAIGSLIST, INC., a Delaware
15 corporation,

16 Plaintiff,

17 v.

18 EVERYMD.COM LLC, a California
limited liability company,

19 Defendants.
20
21

Case No. 3:16-cv-03421-EMC

**FIRST AMENDED COMPLAINT FOR
DECLARATORY JUDGMENT OF PATENT
NON-INFRINGEMENT AND INVALIDITY**

DEMAND FOR JURY TRIAL

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1 For its First Amended Complaint against EveryMD.com LLC (“EveryMD.com”),
2 Plaintiff craigslist, Inc. (“craigslist”) alleges as follows:

3 **NATURE OF THE ACTION**

4 1. This is a declaratory judgment action arising under the Declaratory Judgment Act,
5 28 U.S.C. § 2201 et seq. and the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.*
6 Plaintiff craigslist seeks a declaration of non-infringement and invalidity of United States Patent
7 No. 8,499,047 (“the ’047 patent”). Plaintiff craigslist requests this relief because Defendant
8 EveryMD.com has asserted that it believes craigslist is infringing the ’047 patent through
9 operation of its online forum for local classified advertising. EveryMD.com’s allegations have
10 placed an unjustified cloud on craigslist’s activities, creating a justiciable controversy between
11 craigslist and EveryMD.com.

12 **THE PARTIES**

13 2. Plaintiff craigslist is a Delaware corporation, with its principal place of business
14 in San Francisco, California.

15 3. Founded in San Francisco in 1995 by Craig Newmark, craigslist began as an
16 email list for friends and co-workers to share information about events in and around the San
17 Francisco Bay Area. It grew over time in size and scope, and became the world’s largest online
18 forum for local classified advertising and community discussions. Today craigslist is one of the
19 most visited sites on the internet, with hundreds of billions of page views served annually. More
20 than 60 million Americans visit craigslist each month, and they collectively post several hundred
21 million classified ads each year.

22 4. Upon information and belief, Defendant EveryMD.com is a limited liability
23 company organized and existing under the laws of the State of California, having a principal
24 place of business at 2032 Whitley Ave., Los Angeles, CA, 90068.

25 **JURISDICTION AND VENUE**

26 5. This Court has jurisdiction over the subject matter of this action pursuant to 28
27 U.S.C. §§ 1331 and 1338(a), in that it involves substantial claims arising under the United States
28 Patent Act, 35 U.S.C. § 1, *et seq.*

1 6. This Court has jurisdiction to provide declaratory judgment that the '047 patent is
2 invalid and not infringed pursuant to 28 U.S.C. §§ 2201 and 2202, arising from the case of actual
3 controversy described herein.

4 7. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400(b).

5 8. This Court has personal jurisdiction over Defendant EveryMD.com. On
6 information and belief, Defendant EveryMD.com maintains its principal place of business in this
7 State and has purposefully availed itself of the privilege of conducting activities in this State and
8 this District.

9 9. This is an intellectual property action to be assigned on a district-wide basis under
10 Civil Local Rule 3-2. This case may also be assigned to the San Francisco Division, as a
11 substantial part of the events giving rise to the alleged claims occurred in San Francisco County.

12 **EXISTENCE OF ACTUAL CONTROVERSY**

13 10. On June 13, 2016, Frank Weyer—a Managing Member of EveryMD.com—sent a
14 letter to Plaintiff craigslist captioned “Notice of Infringement of U.S. Patent No. 8,499,047.” A
15 copy of this letter is attached hereto as Exhibit B.

16 11. The June 13, 2016 letter stated: “Attached is a claim chart showing how Craigslist
17 infringes EveryMD.com’s U.S. Patent No. 8,499,047. A copy of U.S. Patent No. 8,499,047 is
18 also enclosed. Please stop infringing our patent.”

19 12. Defendant EveryMD.com has demonstrated its preparedness, intent, and
20 willingness to sue craigslist for infringement of the '047 patent.

21 13. Plaintiff craigslist reasonably apprehends that it will be improperly sued by
22 Defendant EveryMD.com on the '047 patent.

23 14. An immediate, real, and justiciable controversy exists between Plaintiff craigslist
24 and Defendant EveryMD.com with respect to the infringement and validity of the claims of the
25 '047 patent.

26 **THE PATENT AT ISSUE**

27 15. Upon information and belief, Defendant EveryMD.com is the assignee of the
28 entire right, title, and interest in the '047 patent, entitled “Method, Apparatus and Business

1 System for Online Communication With Online and Offline Recipients,” which issued on July
2 30, 2013 and was assigned to Defendant EveryMD.com on Sept. 16, 2015. A copy of the ’047
3 patent is attached hereto as Exhibit A.

4 16. On August, 23, 2013, Defendant EveryMD.com filed a complaint in the Central
5 District of California alleging that Facebook, Inc. (“Facebook”) infringed the ’047 patent. *See*
6 Case No. 2:13-cv-06208-MRP-FFM. EveryMD.com amended its complaint on November 1,
7 2013 to allege in particular that Facebook infringed claims 1-3 and 5-6 of the ’047 patent.

8 17. On December 6, 2013, Facebook, Inc. filed a petition with the Patent Trial and
9 Appeal Board (“PTAB”) seeking *inter partes* review of claims 1-3 and 5-6 of the ’047 patent and
10 subsequently filed a corrected version of this petition on December 23, 2013 (“Corrected
11 Petition”). The Corrected Petition, attached as Exhibit C, relied on five prior art references: (1)
12 André Bacard, *The Computer Privacy Handbook* (1995), ISBN #1-56609-171-3, pages 65-68
13 (“Bacard”); U.S. Patent No. 6,591,291 to Eran Gabber et al. (“Gabber”); U.S. Patent No.
14 5,884,246 to Guillaume Boucher et al. (“Boucher”); U.S. Patent No. 6,161,129 to Mark
15 Rochkind (“Rochkind”); and Peter Wayner, *Disappearing Cryptography* (1996), ISBN #0-12-
16 738671-8, pages 177-197 (“Wayner”). The Corrected Petition raised two grounds for
17 unpatentability based on this prior art: (1) that claims 1-3 and 5-6 of the ’047 patent were
18 obvious under § 103 over Bacard in view of Gabber and Wayner, and (2) that these same claims
19 were obvious under § 103 over Boucher in view of Rochkind.

20 18. On May 21, 2014, the PTAB instituted *inter partes* review of claims 1-3 and 5-6
21 of the ’047 patent based on the Corrected Petition, holding that there was a reasonable likelihood
22 that these claims were obvious over the combination of Bacard, Gabber, and Wayner. The
23 PTAB did not consider whether the claims were obvious over the combination of Boucher and
24 Rochkind, instead holding that this ground was redundant given that the Corrected Petition did
25 not explain whether it was better in any respect to the combination of Bacard, Gabber, and
26 Wayner.

27 19. In response to institution of *inter partes* review, Defendant EveryMD.com filed a
28 motion to amend requesting to cancel claims 1-3 and 5-6 and substitute proposed claims 7-11. In

1 its opposition to this motion (“Opposition”), attached as Exhibit D, Facebook argued that the
2 proposed claims 7-9 and 11 were obvious in light of the combination of Baccard, Gabber, and
3 Wayner with U.S. Patent No. 5,913,212 to Sutcliffe et al. (“Sutcliffe”). Facebook also argued in
4 its Opposition that claim 10 lacked sufficient written description in addition to being obvious.

5 20. On May 12, 2015, the PTAB entered a final written decision (“Final Decision”),
6 attached as Exhibit E, cancelling claims 1-3 and 5-6. The Final Decision agreed with Facebook
7 that proposed claims 7-11 were unpatentable, holding that proposed claim 10 lacked sufficient
8 written description support and that claims 7-9 and 11 were not patentable over the prior art of
9 record.

10 21. Defendant EveryMD.com appealed the PTAB’s decision that proposed claims
11 7-11 were unpatentable to the United States Court of Appeals for the Federal Circuit, which
12 affirmed the PTAB’s decision on March 28, 2016. Thus, claim 4, which was not at issue in the
13 *inter partes* review and appeal described above, is the only remaining claim of the ’047 patent.

14 COUNT I

15 Declaratory Judgment of Non-Infringement of U.S. Patent No. 8,499,047

16 22. Plaintiff craigslist realleges and incorporates by reference all of the factual
17 allegations set forth above.

18 23. Defendant EveryMD.com alleges that craigslist infringes claim 4 of the ’047
19 patent. Plaintiff craigslist has not directly infringed, contributed to the infringement, or actively
20 induced infringement claim 4 of the ’047 patent and is in no way liable for such alleged
21 infringement of claim 4 of the ’047 patent.

22 24. As one example, EveryMD.com’s infringement allegations fail to show that
23 craigslist performs a method that includes either “creating a first created email address” or
24 “creating a second created email address” in claim 1, from which claim 4 depends.

25 25. As another example, EveryMD.com’s infringement allegations fail to show that
26 craigslist performs a method that includes the limitation “said first computer system creating a
27 second modified e-mail message by replacing said second created e-mail address in said second
28 incoming e-mail message with said first existing e-mail address” in claim 3, from which claim 4

1 depends.

2 26. Based on the foregoing, Plaintiff craigslist seeks a declaratory judgment that it has
3 not infringed claim 4 of the '047 patent, either directly or indirectly, jointly, literally, or under
4 the doctrine of equivalents, or in any way, willfully or otherwise.

5 **COUNT II**

6 **Declaratory Judgment of Invalidity of U.S. Patent No. 8,499,047**

7 27. Plaintiff craigslist realleges and incorporates by reference all of the factual
8 allegations set forth above.

9 28. Claim 4 of the '047 patent is invalid, because it fails to comply with the
10 requirements of Title 35 of the United States Code. §§ 1, *et seq.*, including, inter alia, §§ 101,
11 102, 103, and/or 112.

12 29. As one example, claim 4 of the '047 patent is invalid under 35 U.S.C. § 103 as
13 being rendered obvious by the combination of Baccard, Gabber, and Wayner.

14 30. As another example, claim 4 of the '047 patent is invalid under 35 U.S.C. § 103
15 as being rendered obvious by the combination of Baccard, Gabber, Wayner, and Sutcliffe.

16 31. As another example, claim 4 of the '047 patent is invalid under 35 U.S.C. § 103
17 as being rendered obvious by the combination of Boucher and Rochkind.

18 32. As another example, claim 4 of the '047 patent is invalid under 35 U.S.C. § 112,
19 first paragraph, as failing to be supported by an adequate written description of the claim terms
20 “creating a first created email address” and “creating a second created email address,” as those
21 terms have been interpreted by EveryMD.com. The inventors of the '047 patent were not in
22 possession of the invention of claim 4, under EveryMD.com’s interpretation of this claim, as of
23 the filing date of the '047 patent.

24 33. As another example, claim 4 of the '047 patent is invalid under 35 U.S.C. § 101
25 because the claim is directed, under EveryMD.com’s interpretation of the claim, to the abstract
26 idea of allowing people to communicate pseudo-anonymously through intermediary addresses.

27 34. Based on the foregoing, Plaintiff craigslist seeks a declaratory judgment that
28 claim 4 of the '047 patent is invalid.

JURY DEMAND

35. Plaintiff craigslist respectfully requests a jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, craigslist prays that judgment be entered in its favor and against Defendant EveryMD.com including:

1. judgment declaring Plaintiff craigslist has not directly infringed, contributed to the infringement, or actively induced infringement of claim 4 of the '047 patent, and that it is in no way liable for any alleged infringement, directly or indirectly, of any valid and enforceable claim of the '047 patent;
2. judgment declaring that claim 4 of the '047 patent is invalid;
3. an award of attorneys' fees, costs, and expenses incurred in this action due to an exceptional case and in overall interest of justice pursuant to, *inter alia*, 35 U.S.C. § 285; and
4. such other and further relief as this Court deems is just and proper.

Dated: July 7, 2016

Respectfully submitted,

LATHAM & WATKINS LLP

By: /s/ Perry J. Viscounty
Perry J. Viscounty
Ryan R. Owens

Attorney for Plaintiff
CRAIGSLIST, INC.