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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 FACEBOOK INC., a Delaware
19 Corporation,

20 Defendant.

Civil Action No. 2:16-cv-06473 AB (JEMx)

**FIRST AMENDED 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 FACEBOOK INC.
28

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

7 4. Defendant is a Delaware Corporation with a place of business at 1
8 Hacker Way, Menlo Park, CA 94025.

9
10 **THE EVERYMD PATENTS**

11 5. Plaintiff owns the website www.everymd.com.

12 6. Plaintiff’s website at www.everymd.com has since 2001 provided
13 individual home pages for over 300,000 doctors and electronic messaging services
14 allowing patients to communicate with those 300,000 doctors.

15 7. Plaintiff’s members Frank Weyer and Troy Javaher (collectively, “the
16 EveryMD inventors”) invented numerous novel technologies and inventions during
17 development of the www.everymd.com website.

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

24 9. To date, five separate patents covering four separate inventions have
25 issued from the patent application originally filed in November 1999. Those patents
26 (collectively, the “EveryMD Patents”) are U.S. Patent Nos. 6,671,714 (issued
27 December 30, 2003), 7,644,122 (issued January 5, 2010), 8,499,047 (issued July 30,
28 2013), 8,504,631 (issued August 6, 2013) and 9,137,192 (issued September 15, 2015).

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10. Plaintiff is the assignee of record of the EveryMD Patents.

11. Plaintiff has provided constructive notice of the EveryMD Patents by marking the patent numbers of the EveryMD Patents on Plaintiff’s website at www.everymd.com.

FIRST CAUSE OF ACTION
INFRINGEMENT OF U.S. PATENT NO. 9,137,192

12. Plaintiff incorporates by reference paragraphs 1–11 as though fully set forth herein.

13. Plaintiff is the assignee of record of U.S. Patent No. 9,137,192 entitled “Method and Apparatus for Generating Web Pages for Members” (“the ‘192 patent”). A copy of the ‘192 patent is attached as Exhibit 1.

14. The ‘192 patent is valid and in full force and effect.

15. The claims of the ‘192 patent expressly include the limitations that distinguish over the prior art that the Federal Circuit held were missing from the claims of U.S. Patent No. 7,644,122 (“the ‘122 patent”) under the “broadest reasonable interpretation” standard applicable during Patent Office reexamination of the ‘122 patent.

16. The ‘192 patent issued on September 15, 2015.

17. As indicated on the first page of the ‘192 patent, the term of the ‘192 patent has been extended by the Patent Office by 302 days.

18. On September 25, 2015, Plaintiff’s attorney sent Facebook a letter giving Facebook actual notice of Facebook’s infringement of the ‘192 patent. A copy of that notice letter is attached as Exhibit 2. According to the records of the U.S. Postal Service, the letter was delivered to Facebook on September 28, 2015.

1 19. Plaintiff’s notice letter to Facebook included a copy of the ‘192 patent
2 and a claim chart showing an example of how Facebook has infringed claim 1 of the
3 ‘192 patent.
4

5 20. Defendant Facebook has directly infringed the ‘192 patent by practicing
6 the claimed invention of the ‘192 patent without authorization of Plaintiff. Examples
7 of how Facebook has infringed claims 1-3, 8-9, 12 and 16 of the ‘192 patent are
8 shown in the claim chart attached as Exhibit 3.

9 21. Facebook received actual notice of Plaintiff’s patent rights in the ‘192
10 patent at least as early as September 28, 2015, but has continued to act in conscious
11 and willful disregard of those rights after receiving such actual notice.
12

13 **SECOND CAUSE OF ACTION**
14 **INFRINGEMENT OF U.S. PATENT NO. 8,504,631**

15 22. Plaintiff incorporates by reference paragraphs 1–21 as though fully set
16 forth herein.

17 23. Plaintiff is the assignee of record of U.S. Patent No. 8,504,631 entitled
18 “Method Apparatus and Business System for Online Communications with Online
19 and Offline Recipients” (“the ‘631 patent”). A copy of the ‘631 patent is attached as
20 Exhibit 4.

21 24. The ‘631 patent is valid and in full force and effect.

22 25. The ‘631 patent issued on August 6, 2013.

23
24 26. On November 6, 2013, Facebook filed a “Notice of Related Cases” in
25 Civil Action No. 2:13-cv-06208 SJO-PLA then pending in the U.S. District Court for
26 the Central District of California in which Facebook stated:

27 *In the Google and Twitter actions, EveryMD.com alleges*
28 *infringement of U.S. Patent No. 8,504,631 (the “’631 patent”), bearing*

1 *an identical title as the '047 patent-in-suit. (Case No. 2:13-CV-06490-*
2 *PSG-AJW at Dkt. No. 1; Case No. 2:13-CV-06680-JEM at Dkt. No. 1.)*
3 *The '631 patent claims priority to the same patent application and shares*
4 *the same specification as the '047 and '122 patents. Finally, in the eBay*
5 *action, EveryMD alleges infringement of the '047 patent, the same patent*
6 *at issue in the present action. (Case No. 2:13-CV-08017-GW-MAN at*
7 *Dkt. No. 1.)*

8 *The present case involves the same patent as the eBay action, and*
9 *a single closely-related patent is involved in both the Google and Twitter*
10 *actions. Thus, the Google, Twitter and eBay actions, like the Weyer*
11 *action, will involve similar invalidity and claim construction analyses,*
12 *and would entail substantial duplication of labor and potentially*
13 *inconsistent claim construction rulings if heard by different judges.*

14 27. Defendant Facebook has directly infringed the '631 patent by practicing
15 the claimed invention of the '631 patent without authorization of Plaintiff. Examples
16 of how Facebook has infringed claims 1, 3, 5, 7, 8 and 9 of the '631 patent are shown
17 in the claim chart attached as Exhibit 5.

18 28. Facebook has had actual notice of Plaintiff and Plaintiff's predecessors
19 patent rights in the '631 patent since at least as early as November 6, 2013, the date it
20 filed the Notice of Related Cases referred to in paragraph 26 hereof, but has continued
21 to act in conscious and willful disregard of those rights despite having such actual
22 notice.
23

DEMAND FOR RELIEF

WHEREFORE, Plaintiff asks this Court to:

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

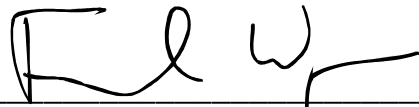
DEMAND FOR JURY TRIAL

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

Respectfully submitted,
TECHCOASTLAW®

Dated: October 7, 2016

By:



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