

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

BLACKBIRD TECH LLC d/b/a
BLACKBIRD TECHNOLOGIES,

Plaintiff,

v.

VIMEO, INC.,

Defendant.

C.A. No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Blackbird Tech LLC d/b/a Blackbird Technologies (“Blackbird Technologies”) hereby alleges for its Complaint for Patent Infringement against Defendant Vimeo, Inc. (“Vimeo”) on personal knowledge as to its own activities and on information and belief as to all other matters, as follows:

THE PARTIES

1. Plaintiff Blackbird Technologies is a Delaware limited liability company with its principal place of business located at 200 Baker Avenue, Suite 203, Concord, Massachusetts 01742.
2. On information and belief, Defendant Vimeo is a Delaware corporation with a place of business in New York, New York.

JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the provisions of the Patent Laws of the United States of America, Title 35, United States Code §§ 100, *et seq.*

4. Subject-matter jurisdiction over Blackbird Technologies' claims is conferred upon this Court by 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1338(a) (patent jurisdiction).

5. This Court has personal jurisdiction over Vimeo because Vimeo is subject to general and specific jurisdiction in Delaware. Vimeo has also established minimum contacts with this forum. Vimeo has been incorporated in Delaware at all relevant times. Vimeo regularly conducts business in Delaware, including by marketing, selling, and/or offering for sale videos, including "Vimeo Originals," from its on-demand library, and Vimeo memberships for uploading and sharing videos (collectively, the "Vimeo Service") through its website, www.vimeo.com (the "Vimeo Website"), which is accessible throughout the United States, including Delaware. The Vimeo Service is also accessible from an app for iOS and Android devices (the "Vimeo App"), which is marketed through the Vimeo Website and is available throughout the United States, including Delaware. Vimeo Service users can download videos onto their computers from the Vimeo Website or onto their mobile devices running the Vimeo App for offline viewing. Vimeo Service users located in the District of Delaware include without limitation the Delaware National Guard, *see* <https://vimeo.com/delawarenationalguard/>, Delaware Technical Community College, *see* <https://vimeo.com/dtcc>, and Delaware Juniors Volleyball Club, *see* <https://vimeo.com/delawarejuniors>. The exercise of personal jurisdiction comports with Vimeo's right to due process because, as described above, Vimeo has purposefully availed itself of the privilege of conducting activities within Delaware such that it should reasonably anticipate being haled into court here. As alleged herein, acts by Vimeo in this district have caused injury to Blackbird Technologies.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c) and § 1400(b) at least because Vimeo transacts business within this district and has committed acts in this district that infringe U.S. Patent No. 7,174,362.

U.S. PATENT NO. 7,174,362

7. U.S. Patent No. 7,174,362 (the “’362 patent” or “patent-in-suit”) entitled, “Method and System for Supplying Products from Pre-Stored Digital Data in Response to Demands Transmitted via Computer Network,” was duly and legally issued by the U.S. Patent and Trademark Office on February 6, 2007. Blackbird Technologies is the owner by assignment of all right, title, and interest in and to the ’362 patent, including all right to recover for any and all infringement thereof. The ’362 patent is valid and enforceable. A true and correct copy of the ’362 patent is attached as Exhibit A.

8. Claim 2 of the ’362 patent recites, for example, a computer-implemented method of digital data duplication whereby requests are processed by a computer over a network. The computer comprises modules configured to execute the requests: A first module configured to create a task log based on incoming requests; a second module configured to store all available digital data for duplication, which comprises an expandable indexed archive of digital data, and a resource file for an output device; and a third module configured to retrieve requested digital data, download the data to an output device, and command the output device to transfer the data onto media.

9. Claim 10 of the ’362 patent recites, for example, a computer-implemented method of digital data duplication whereby requests are processed by a computer over a network. The computer comprises modules configured to execute the requests: A first module configured to create a task log based on incoming requests; a second module configured to store all available

digital data for duplication; and a third module configured to retrieve requested digital data, download the data to an output device, and command the output device to transfer the data onto media. The storage capacity remaining in an output device is tracked.

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 7,174,362

10. Blackbird Technologies reasserts and incorporates by reference Paragraphs 1 through 9 of this Complaint as if fully set forth herein.

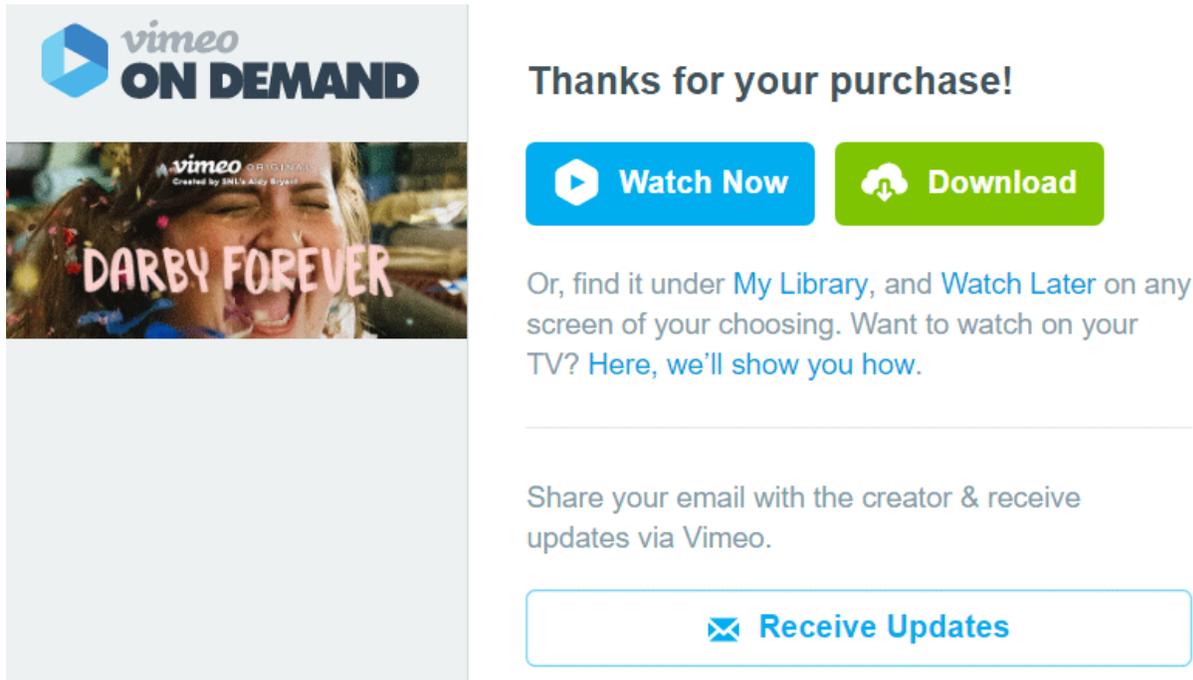
11. The Vimeo Website and Vimeo App enable Vimeo Service users to download certain videos onto their computer and mobile device, respectively, for offline viewing. *See, e.g.*, Vimeo Help Center @ How to buy, rent, and subscribe to On Demand videos, VIMEO, <https://help.vimeo.com/hc/en-us/articles/235694348-How-to-buy-On-Demand-videos> (“If the seller allows, you will also be able to download the videos to your computer and devices, DRM-free.”); Vimeo Help Center @ Watching your On Demand Videos, VIMEO, <https://help.vimeo.com/hc/en-us/articles/235696528-Watching-your-On-Demand-videos> (“If your purchase has a download option, you can save the video file to your computer by clicking the Download button on the title’s page (just below the video player). You can also do this by going to your Purchases and clicking the green download icon that appears while hovering over the title’s poster image.”); Vimeo Help Center @ Downloading Videos, VIMEO, <https://help.vimeo.com/hc/en-us/articles/229678128-Downloading-videos> (“To download a video, click the Download button that appears below the video player. Once you’ve done that, a little menu will appear, and in some cases, you’ll see links for several different versions of the video, including a mobile, SD, and/or HD file.”); Vimeo Help Center @ Vimeo iOS app, VIMEO, <https://help.vimeo.com/hc/en-us/articles/224818207-Vimeo-iOS-app> (“Downloading videos for offline playback ... When viewing a feed of videos, tap the ellipsis next to the video you want to

download and tap ‘Make Available Offline.’ Your video will begin downloading to your device, and you’ll see a progress bar appear. Once the download has completed, you can find it under the Offline tab of your Playlists. You can also download a video while in the player view by tapping the Download icon. Downloaded videos are only available for playback within the Vimeo app, and cannot be accessed by other apps.”).

12. Vimeo stores an expandable indexed archive of videos, certain of which are available for download onto a Vimeo Service user’s computer or mobile device with the Vimeo App. *See, e.g.,* <https://vimeo.com/upgrade> (offering Vimeo membership tiers each with different video upload limits for potential distribution to Vimeo Service users).

13. Vimeo takes download requests upon selection of a download icon/command.

For example:



(Vimeo Website after purchasing a video.)

Download ✕



Darby Forever

Select the subtitle language and file type you want, then click the cloud to download.

English 1080p.MP4

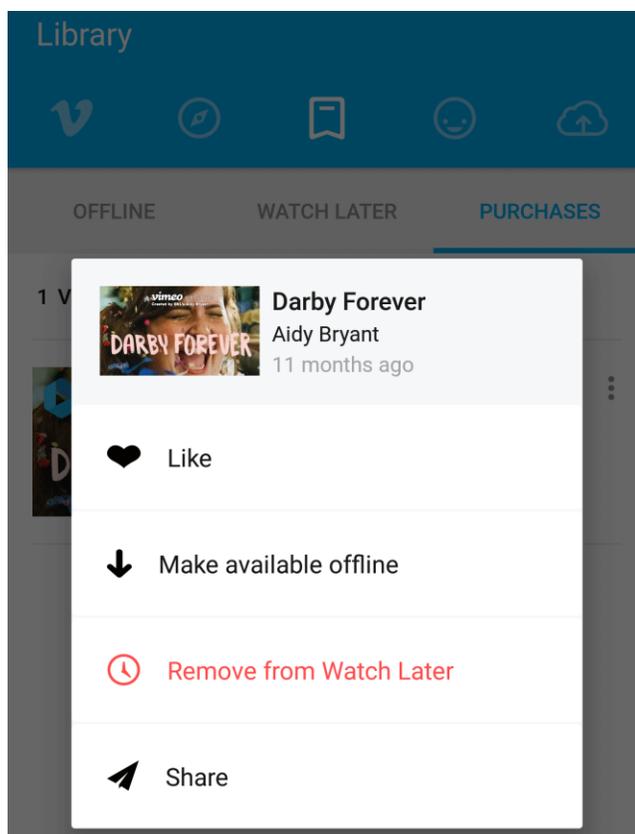
Episodes (1 of 1)	Subtitles	Video
Darby Forever FINAL		 632.883MB

(Vimeo Website after requesting download of a purchased video.)

Download ✕

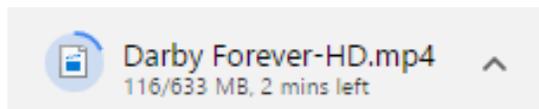
SD 360p	640 × 268 / 15.325MB	<input type="button" value="Download"/>
SD 540p	960 × 402 / 39.033MB	<input type="button" value="Download"/>
HD 720p	1366 × 572 / 74.421MB	<input type="button" value="Download"/>
HD 1080p	1920 × 804 / 128.942MB	<input type="button" value="Download"/>
Original	2048 × 858 / 520.846MB	<input type="button" value="Download"/>

(Vimeo Website after requesting download of a Vimeo Service user's shared video.)

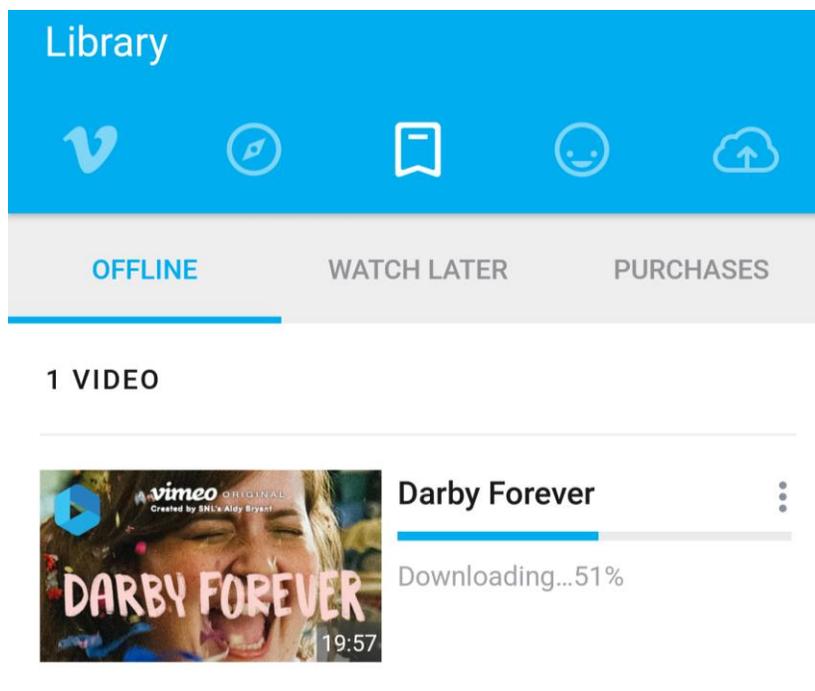


(Vimeo App for Android (with “Make available offline” download option for video).)

14. After Vimeo processes a Vimeo Service user’s download request from the Vimeo Website or Vimeo App, the requested video is stored on that Vimeo Service user’s computer or mobile device such that it can be viewed offline:



(Status indicator when downloading requested video from Vimeo Website onto hard drive.)



(screenshot from STARZ App for Android (showing status indicator when downloading requested video onto mobile device).)

15. Vimeo creates a task log based on incoming download requests as evidenced by, for example, the downloaded video’s identification on a Vimeo Service user’s “Purchases” page, *see supra* at ¶ 14, and the collection of various information by Vimeo relating to a Vimeo Service user’s usage of the Vimeo Service. *See* Vimeo.com Privacy Policy (Rev. July 13 2016) (“We may use information that we collect about you to: deliver the products and services that you have requested ...”), available at <https://vimeo.com/privacy>.

16. Vimeo maintains information associated with the Vimeo Service user’s computer or mobile device, including for example any download limitations:

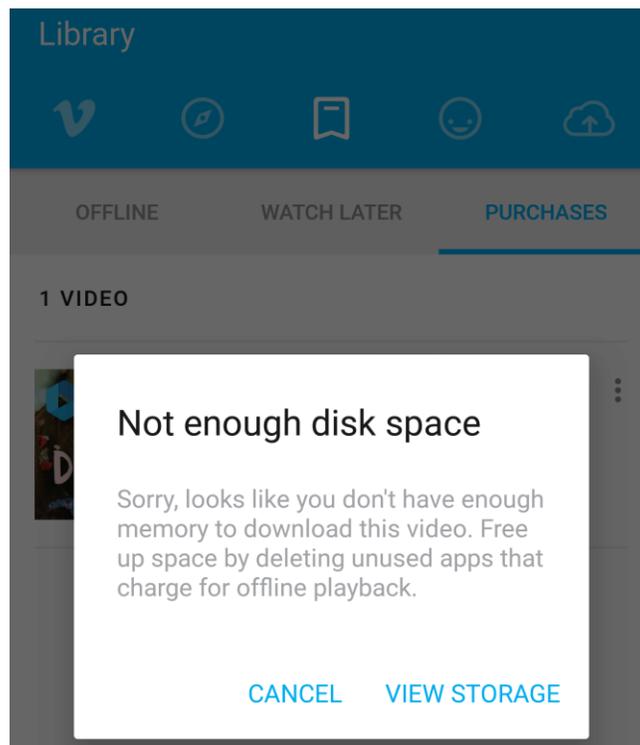
Mature content filter

Choose what types of videos you do and do not want to see on Vimeo. Learn more about what constitutes mature content in our FAQ.

- Show me everything
- Don't show mature content
- Let me choose
 - Don't show unrated
 - Don't show profanity / sexually suggestive content
 - Don't show drugs / alcohol
 - Don't show violence
 - Don't show nudity

(Viewing Preferences, VIMEO, https://vimeo.com/settings/viewing_preferences (screenshot from “Mature content filter” settings for logged in Vimeo Service user).)

17. Vimeo tracks the storage capacity remaining in at least the Vimeo Service user’s mobile device:



(message displayed on Vimeo App for Android after a queued Vimeo Service download request causes the total size of the pending downloads to exceed the mobile device's available storage space).

18. Therefore, Vimeo, pursuant to 35 U.S.C. § 271(a), has directly infringed and continues to directly infringe, literally and/or under the doctrine of equivalents, one of more claims of the '362 patent, including at least claims 2 and 10.

Damages

19. Blackbird Technologies has sustained damages as a direct and proximate result of Defendant's infringement of the '362 patent.

20. As a consequence of Defendant's past infringement of the '362 patent, Blackbird Technologies is entitled to the recovery of past damages in the form of, at a minimum, a reasonable royalty.

21. As a consequence of Defendant's continued and future infringement of the '362 patent, Blackbird Technologies is entitled to royalties for its infringement of the '362 patent on a going-forward basis.

PRAYER FOR RELIEF

WHEREFORE, Blackbird Technologies respectfully requests that this Court enter judgment against Defendant, as follows:

A. Adjudging that Defendant has infringed at least claims 2 and 10 of the '362 patent literally and/or under the doctrine of equivalents, in violation of 35 U.S.C. § 271(a);

B. An award of damages to be paid by Defendant adequate to compensate Blackbird Technologies for Defendant's past infringement and any continuing or future infringement up

until the date such judgment is entered, and in no event less than a reasonable royalty, including interest, costs, and disbursements pursuant to 35 U.S.C. § 284;

C. Ordering Defendant to continue to pay royalties to Blackbird Technologies for infringement of the '362 patent on a going-forward basis;

D. Adjudging that this case be exceptional under 35 U.S.C. § 285 and awarding enhanced damages, including costs and attorneys' fees, to Blackbird Technologies;

E. Awarding Blackbird Technologies pre-judgment and post-judgment interest at the maximum rate permitted by law on its damages; and

F. Granting Blackbird Technologies such further relief as this Court deems just and proper under the circumstances.

DEMAND FOR JURY TRIAL

Blackbird Technologies demands a trial by jury on all claims and issues so triable.

Dated: February 1, 2017

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