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12 Attorneys for Express Mobile, Inc.

13
14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16 WESTERN DIVISION
17

18 EXPRESS MOBILE, INC.,

19 Plaintiff,

20 vs.

21 PERFICIENT, INC.

22 Defendant.
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25
26
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28

) Case No.: 2:19-cv-5105

) **COMPLAINT FOR PATENT
INFRINGEMENT**

) DEMAND FOR JURY TRIAL

1 Plaintiff Express Mobile, Inc. (“Express Mobile” or “Plaintiff”), for its
2 Complaint against Defendant Perficient, Inc., (“Perficient” or “Defendant”) alleges the
3 following:

4 **NATURE OF THE ACTION**

5 1. This is an action for patent infringement arising under the Patent Laws of
6 the United States, 35 U.S.C. § 1 *et seq.*

7 **THE PARTIES**

8 2. Plaintiff is a corporation organized under the laws of the State of
9 Delaware with a place of business at 3415 Custer Rd. Suite 104, Plano, TX 75023.

10 3. Upon information and belief, Perficient is a corporation organized and
11 existing under the laws of Delaware, with a place of business at 2020 Main Street,
12 Irvine, CA 92614 and can be served through its registered agent, The Corporation
13 Trust Company, 1209 Orange St., Wilmington, DE 19801.

14 4. Upon information and belief, Perficient sells and offers to sell products
15 and services throughout the United States, including in this judicial district, and
16 introduces products and services into the stream of commerce and that incorporate
17 infringing technology knowing that they would be sold in this judicial district and
18 elsewhere in the United States.

19 **JURISDICTION AND VENUE**

20 5. This is an action for patent infringement arising under the Patent Laws of
21 the United States, Title 35 of the United States Code.

22 6. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and
23 1338(a).

24 7. Venue is proper in this judicial district under 28 U.S.C. §1400(b). On
25 information and belief, Defendant has committed acts of infringement in this District
26 and has a regular and established place of business within this District.

27 8. On information and belief, Defendant is subject to this Court’s general
28 and specific personal jurisdiction because Defendant has sufficient minimum contacts

1 within the State of California and this District, pursuant to due process and/or the
2 California Long Arm Statute because Defendant purposefully availed itself of the
3 privileges of conducting business in the State of California and in this District,
4 because Defendant regularly conducts and solicits business within the State of
5 California and within this District, and because Plaintiff's causes of action arise
6 directly from each of Defendant's business contacts and other activities in the State of
7 California and this District.

8 **COUNT I – INFRINGEMENT OF U.S. Patent No. 6,546,397**

9 9. The allegations set forth in the foregoing paragraphs 1 through 8 are
10 incorporated into this First Claim for Relief.

11 10. On April 8, 2003, U.S. Patent No. 6,546,397 ("the '397 patent"), entitled
12 "*Browser Based Web Site Generation Tool and Run Time Engine*," was duly and
13 legally issued by the United States Patent and Trademark Office. A true and correct
14 copy of the '397 patent is attached as Exhibit A.

15 11. The inventions of the '397 patent resolve technical problems related to
16 website creation and generation. For example, the inventions enable the creation of
17 websites through browser-based visual editing tools such as selectable settings panels
18 which describe website elements, with one or more settings corresponding to
19 commands, which features are exclusively implemented utilizing computer
20 technology including a virtual machine.

21 12. The claims of the '397 patent do not merely recite the performance of
22 some business practice known from the pre-Internet world along with the requirement
23 to perform it on the Internet. Instead, the claims of the '397 patent recite one or more
24 inventive concepts that are rooted in computerized website creation technology, and
25 overcome problems specifically arising in the realm of computerized website creation
26 technologies.

27 13. The claims of the '397 patent recite an invention that is not merely the
28 routine or conventional use of website creation systems and methods. Instead, the

1 invention describes a browser-based website creation system and method in which the
2 user-selected settings representing website elements are stored in a database, and in
3 which said stored information is retrieved to generate said website.

4 14. The technology claimed in the '397 patent does not preempt all ways of
5 using website or web page authoring tools nor preempt the use of all website or web
6 page authoring tools, nor preempt any other well-known or prior art technology.

7 15. Accordingly, each claim of the '397 patent recites a combination of
8 elements sufficient to ensure that the claim in practice amounts to significantly more
9 than a patent on an ineligible concept.

10 16. In C.A. 2:17-00128, a case filed in the Eastern District of Texas, the
11 defendant in that action, KTree Computer Solutions brought a Motion for Judgment
12 on the Pleadings asserting that the '397 patent, along with U.S. Patent No. 7,594,168
13 (asserted in Count II below) were invalid as claiming abstract subject matter under 35
14 U.S.C. § 101. (C.A. 2:17-00128 Dkt. 9.) Subsequent briefing included Plaintiff's
15 Response and related Declarations and Exhibits (C.A. 2:17-00128 Dkt. 17, 22-24),
16 KTree's Reply (C.A. 2:17-00128 Dkt. 25), and Plaintiff's Sur-Reply and related
17 Declarations and Exhibits (C.A. 2:17-00128 Dkt. 26-27). Each of those filings is
18 incorporated by reference into this Complaint.

19 17. After a consideration of the respective pleadings, Magistrate Judge Payne
20 recommended denial of KTree's motion, without prejudice, holding that "the claims
21 appear to address a problem particular to the internet: dynamically generating
22 websites and displaying web pages based on stored user-selected settings" and further
23 stating "the asserted claims do not bear all of the hallmarks of claims that have been
24 invalidated on the pleadings by other courts in the past. For example, the claims are
25 not merely do-it-on-a-computer claims." (C.A. 2:17-00128 Dkt. 29 attached hereto as
26 Exhibit B.) Judge Payne's report and recommendation is incorporated by reference
27 into this Complaint. No objection was filed to the Magistrate Judge's report and
28 recommendation and the decision therefore became final.

1 18. In C.A. Nos. 3:18-cv-04679 and 3:18-04688, both of which were filed in
2 the Northern District of California, the respective defendant in each of those actions
3 brought a Motion to Dismiss asserting that the '397 patent, along with U.S. Patent No.
4 7,594,168 (asserted in Count II below) were invalid as claiming abstract subject
5 matter under 35 U.S.C. § 101. The § 101 briefing in each of those cases is
6 incorporated by reference into this Complaint.

7 19. After consideration of the respective pleadings and oral argument, Judge
8 Richard Seeborg issued orders denying each respective motion to dismiss drawing a
9 comparison between the asserted Express Mobile patents with those patents asserted
10 in *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016). (C.A. 3:18 -04679
11 Dkt. 45, attached hereto as Exhibit C, and C.A. 3:18-04688 Dkt. 40, attached hereto as
12 Exhibit D.)

13 20. Plaintiff is the assignee and owner of the right, title and interest in and to
14 the '397 patent, including the right to assert all causes of action arising under said
15 patents and the right to any remedies for infringement of them.

16 21. Upon information and belief, Defendant has and continues to directly
17 infringe at least claims 1-6, 9-11, 14-15, 17, 20, 24-25, 35, and 37 of the '397 patent
18 by using a browser-based website and/or web page authoring tool in which the user-
19 selected settings representing website elements are stored in a database, and in which
20 said stored information is retrieved to generate said website (the "Accused
21 Instrumentalities"). The Accused Instrumentalities include but are not limited to the
22 website building tools used and/or provided by Defendant, such as, for example
23 Drupal and/or Magento. *See, e.g.*, [https://www.perficientdigital.com/our-work/hunter-](https://www.perficientdigital.com/our-work/hunter-douglas)
24 [douglas](https://www.perficient.com/partners/magento); and <https://www.perficient.com/partners/magento>.

25 22. On information and belief, Defendant is a for-profit organization with
26 revenues of approximately \$487 million U.S.D. per year. Moreover, Defendant, its
27 employees and/or agents utilize the Accused Instrumentalities in the building and/or
28 hosting of websites for Defendant's customers, leading to direct or indirect revenues

1 and profit. As one example of indirect profit, entities such as Defendant will
2 frequently offer website building and/or hosting services at reduced pricing as an
3 inducement to attract customers, who then purchase additional products or services.
4 On information and belief, without the availability of infringing tools such as the
5 Accused Instrumentalities, Defendant would be at a disadvantage in the marketplace
6 and would generate less revenue overall.

7 23. In particular, claim 1 of the '397 patent generally recites a method
8 enabling production of websites on and for computers with browsers and virtual
9 machines, by presenting, through a browser, a selectable settings menu describing
10 elements, such setting(s) corresponding to commands to the virtual machine;
11 generating a display in accordance with selected settings; storing information
12 regarding selected settings in a database; generating a website at least in part by
13 retrieving said information; and building web page(s) to generate said website and a
14 run time file, where the run time file uses the stored information to generate virtual
15 machine commands for the display of at least a portion of web page(s).

16 24. The Accused Instrumentalities infringe claim 1 of the '397 patent through
17 a combination of features which collectively practice each limitation of claim 1. By
18 way of example, modern internet browsers such as Microsoft Internet Explorer,
19 Mozilla's Firefox, Apple Safari, Google Chrome, and Opera include virtual machines
20 within the meaning of the '397 patent. (*See, e.g.*,
21 <http://developer.telerik.com/featured/a-guide-to-javascript-engines-for-idiots/>;
22 <http://dictionary.reference.com/browse/virtual+machine?s=t>). The Accused
23 Instrumentalities support the use of the latest versions of Internet Explorer 11 or later,
24 Microsoft Edge, latest-1, Firefox latest, latest-1, Chrome latest, latest-1, Safari latest,
25 latest-1 (Mac OS), Safari Mobile for iPad 2, iPad Mini, iPad with Retina Display (iOS
26 7 or later), for desktop site, Safari Mobile for iPhone 4 or later; iOS 7 or later, for
27 mobile site, Chrome for mobile latest-1 (Android 4 or later) for mobile site, where
28 *latest-1* means one major version earlier than the latest released version. (*See, e.g.*,

1 [https://www.drupal.org/docs/8/system-requirements/browser-;](https://www.drupal.org/docs/8/system-requirements/browser-)
2 [http://devdocs.magento.com/guides/v2.0/install-gde/system-](http://devdocs.magento.com/guides/v2.0/install-gde/system-requirements_browsers.html)
3 [requirements_browsers.html](http://devdocs.magento.com/guides/v2.0/install-gde/system-requirements_browsers.html).) All of these browsers rely on browser engines
4 comprising virtual machines to interpret and execute JavaScript and HTML to render
5 web pages on a computer.

6 25. By way of further example, the Accused Instrumentalities enable users to
7 produce websites through browsers on users' computers via interaction with an
8 Internet server. For example, in order to add a new page to a user's website, the user
9 logs in and then a server of the Accused Instrumentalities initiates presentation to the
10 user through a browser of a website-builder tool. From the interface—sometimes
11 referred to as a dashboard—of the Accused Instrumentalities, the user can navigate
12 and add elements and element properties commensurate with a new page. A display is
13 generated in accordance with one or more user selected settings substantially
14 contemporaneously with the selection thereof. This is performed, for example, using
15 a visual editing tool through a browser. The WYSIWYG interface for selecting center
16 alignment of an image can also be accessed, and then the user can select various
17 options such as a font and paragraph styles. After the user selects options such as
18 image/text alignment or font and paragraph styles through the WYSIWYG editor, the
19 display immediately updates to reflect the selected option. Furthermore, when images
20 are uploaded by a user, those images are displayed in approximately 0-2 seconds
21 depending on file size and bandwidth.

22 26. Data is stored in a database, including information corresponding to user
23 selected settings such as, for example, the selections of text color. Other user
24 selections are also stored including, for example, the layout, image filenames,
25 thumbnails, and paragraph margin settings for defining the alignment of an image
26 location. The Accused Instrumentalities build one or more web pages to generate a
27 website from at least a portion of a database and at least one run time file, where at
28

1 least one run time file utilizes information stored in said database to generate virtual
2 machine commands for the display of at least a portion of said one or more web pages.

3 27. At run time, at least some of these files use information stored in the
4 database to generate the HTML for the final rendered HTML page. This HTML
5 represents virtual machine commands for display of the page because it is read and
6 used by the applicable browser's engine, including a virtual machine, in order to
7 render the page. On information and belief, the Accused Instrumentalities further rely
8 on the browser engine's component JavaScript engine to either display a portion of the
9 page directly, or generate HTML to be executed for display by the main layout engine.

10 28. Additionally, the "PHP code," including the PHP template files, can be
11 viewed in the file directory for the Accused Instrumentalities, and this directory
12 includes various other runtime files (including other PHP files, JavaScript files,
13 PHTML, and/or XML). It follows that a user will view the finalized website
14 developed with said tools in a browser outside of the website authoring environment
15 to verify the website conforms to the intended design. *See, e.g.*,
16 <https://techterms.com/definition/runtime>.

17 29. The presence of the above referenced elements are demonstrated, by way
18 of example, by reference to publicly available information. Regarding Drupal, *see*,
19 *e.g.*, <https://www.drupal.org/home>; <https://www.drupal.org/docs/8/system-requirements/browser-requirements>; <https://www.drupal.org/project/ckeditor>;
20 <https://www.drupal.org/docs/8/core/modules/ckeditor/overview>;
21 <https://dev.acquia.com/blog/tutorial-drupal-8-wysiwyg-inline-and-responsive-images/10/03/2016/9821>; Angela Byron, *Ultimate Guide to Drupal 8* at 4 (2016);
22 <https://www.drupal.org/docs/7/understanding-drupal/technology-stack>;
23 <https://www.drupal.org/docs/8/system-requirements/web-server>;
24 <https://www.drupal.org/docs/8/core/modules/rest/overview>;
25 <https://www.drupal.org/docs/8/core/modules/serialization/overview>;
26 <https://www.drupal.org/docs/8/understanding-drupal-8/overview>;
27
28

1 <https://www.drupal.org/docs/develop/standards/css/css-architecture-for-drupal-8>.
2 Regarding Magento, *see, e.g.*, [http://docs.magento.com/m1/ee/user_guide/system-](http://docs.magento.com/m1/ee/user_guide/system-operations/browser-capabilities-detection.html)
3 [operations/browser-capabilities-detection.html](http://docs.magento.com/m1/ee/user_guide/system-operations/browser-capabilities-detection.html);
4 [http://docs.magento.com/m1/ee/user_guide/system-operations/index-](http://docs.magento.com/m1/ee/user_guide/system-operations/index-management.html)
5 [management.html](http://docs.magento.com/m1/ee/user_guide/system-operations/index-management.html); [http://docs.magento.com/m1/ce/user_guide/cms/magento-](http://docs.magento.com/m1/ce/user_guide/cms/magento-cms.html)
6 [cms.html](http://docs.magento.com/m1/ce/user_guide/cms/magento-cms.html); http://docs.magento.com/m1/ce/user_guide/cms/page-create.html;
7 http://docs.magento.com/m1/ce/user_guide/cms/editor.html;
8 http://docs.magento.com/m1/ce/user_guide/cms/links.html;
9 http://docs.magento.com/m1/ce/user_guide/cms/editor-insert-image.html;
10 http://docs.magento.com/m1/ce/user_guide/cms/editor-add-widget.html;
11 http://docs.magento.com/m1/ce/user_guide/design/page-layout.html;
12 http://docs.magento.com/m1/ce/user_guide/design/layout-updates.html;
13 http://docs.magento.com/m1/ee/user_guide/store-operations/stores-multiple.html;
14 http://docs.magento.com/m1/ee/user_guide/store-operations/store-hierarchy.html;
15 [http://docs.magento.com/m1/ee/user_guide/system-operations/index-](http://docs.magento.com/m1/ee/user_guide/system-operations/index-management.html)
16 [management.html](http://docs.magento.com/m1/ee/user_guide/system-operations/index-management.html).

17 30. Claim 2 of the '397 patent generally recites an apparatus for producing
18 websites on and for computers having a browser and a virtual machine, said apparatus
19 comprising an interface to present a settings menu which describes elements, said
20 panel presented through a browser, where the selectable setting(s) corresponds to
21 commands to the virtual machine; a browser to generate a display in accordance with
22 selected setting(s); a database for storing information regarding selected settings; and
23 a build tool having run time file(s) for generating web page(s) and using stored
24 information to generate commands to the virtual machine for generating at least a
25 portion of web page(s).

26 31. The Accused Instrumentalities infringe claim 2 of the '397 patent through
27 a combination of features which collectively practice each limitation of claim 2. By
28 way of example, modern internet browsers such as Microsoft Internet Explorer,

1 Mozilla’s Firefox, Apple Safari, Google Chrome, and Opera include virtual machines
2 within the meaning of the ’397 patent. (*See, e.g.*,
3 <http://developer.telerik.com/featured/a-guide-to-javascript-engines-for-idiots/>;
4 <http://dictionary.reference.com/browse/virtual+machine?s=t>). The Accused
5 Instrumentalities support the use of the latest versions of Internet Explorer 11 or later,
6 Microsoft Edge, latest–1, Firefox latest, latest–1, Chrome latest, latest–1, Safari latest,
7 latest–1 (Mac OS), Safari Mobile for iPad 2, iPad Mini, iPad with Retina Display (iOS
8 7 or later), for desktop site, Safari Mobile for iPhone 4 or later; iOS 7 or later, for
9 mobile site, Chrome for mobile latest–1 (Android 4 or later) for mobile site, where
10 *latest–1* means one major version earlier than the latest released version. (*See, e.g.*,
11 <https://www.drupal.org/docs/8/system-requirements/browser-requirements>;
12 [http://devdocs.magento.com/guides/v2.0/install-gde/system-](http://devdocs.magento.com/guides/v2.0/install-gde/system-requirements_browsers.html)
13 [requirements_browsers.html](http://devdocs.magento.com/guides/v2.0/install-gde/system-requirements_browsers.html).) All of these browsers rely on browser engines
14 comprising virtual machines to interpret and execute JavaScript and HTML to render
15 web pages on a computer.

16 32. By way of further example, the Accused Instrumentalities enable users to
17 produce websites through browsers on users’ computers via interaction with an
18 Internet server. For example, in order to add a new page to a user’s website, the user
19 logs in and then a server of the Accused Instrumentalities initiates presentation to the
20 user through a browser of a website-builder tool. From the interface—sometimes
21 referred to as a dashboard—of the Accused Instrumentalities, the user can navigate
22 and add elements and element properties commensurate with a new page. A display is
23 generated in accordance with one or more user selected settings substantially
24 contemporaneously with the selection thereof. This is performed, for example, using
25 a visual editing tool through a browser. The WYSIWYG interface for selecting center
26 alignment of an image can also be accessed, and then the user can select various
27 options such as a font and paragraph styles. After the user selects options such as
28 image/text alignment or font and paragraph styles through the WYSIWYG editor, the

1 display immediately updates to reflect the selected option. Furthermore, when images
2 are uploaded by a user, those images are displayed in approximately 0-2 seconds
3 depending on file size and bandwidth.

4 33. Data is stored in a database, including information corresponding to user
5 selected settings such as, for example, the selections of text color. Other user
6 selections are also stored including, for example, the layout, image filenames,
7 thumbnails, and paragraph margin settings for defining the alignment of an image
8 location. The Accused Instrumentalities build one or more web pages to generate a
9 website from at least a portion of a database and at least one run time file, where at
10 least one run time file utilizes information stored in said database to generate virtual
11 machine commands for the display of at least a portion of said one or more web pages.

12 34. At run time, at least some of these files use information stored in the
13 database to generate the HTML for the final rendered HTML page. This HTML
14 represents virtual machine commands for display of the page because it is read and
15 used by the applicable browser's engine, including a virtual machine, in order to
16 render the page. On information and belief, the Accused Instrumentalities further rely
17 on the browser engine's component JavaScript engine to either display a portion of the
18 page directly, or generate HTML to be executed for display by the main layout engine.

19 35. Additionally, the "PHP code," including the PHP template files, can be
20 viewed in the file directory for the Accused Instrumentalities, and this directory
21 includes various other runtime files (including other PHP files, JavaScript files,
22 PHTML, and XML). *See, e.g.*, <https://techterms.com/definition/runtime>.

23 36. It follows that a user will view the finalized website developed with said
24 tools in a browser outside of the website authoring environment to verify the website
25 conforms to the intended design.

26 37. The presence of the above referenced elements are demonstrated, by way
27 of example, by reference to publicly available information. Regarding Drupal, *see*,
28 *e.g.*, <https://www.drupal.org/home>; <https://www.drupal.org/docs/8/system->

1 requirements/browser-requirements; <https://www.drupal.org/project/ckeditor>;
2 <https://www.drupal.org/docs/8/core/modules/ckeditor/overview>;
3 [https://dev.acquia.com/blog/tutorial-drupal-8-wysiwyg-inline-and-responsive-](https://dev.acquia.com/blog/tutorial-drupal-8-wysiwyg-inline-and-responsive-images/10/03/2016/9821)
4 [images/10/03/2016/9821](https://dev.acquia.com/blog/tutorial-drupal-8-wysiwyg-inline-and-responsive-images/10/03/2016/9821); Angela Byron, *Ultimate Guide to Drupal 8* at 4 (2016);
5 <https://www.drupal.org/docs/7/understanding-drupal/technology-stack>;
6 <https://www.drupal.org/docs/8/system-requirements/web-server>;
7 <https://www.drupal.org/docs/8/core/modules/rest/overview>;
8 <https://www.drupal.org/docs/8/core/modules/serialization/overview>;
9 <https://www.drupal.org/docs/8/understanding-drupal-8/overview>;
10 <https://www.drupal.org/docs/develop/standards/css/css-architecture-for-drupal-8>.
11 Regarding Magento, *see, e.g.*, [http://docs.magento.com/m1/ee/user_guide/system-](http://docs.magento.com/m1/ee/user_guide/system-operations/browser-capabilities-detection.html)
12 [operations/browser-capabilities-detection.html](http://docs.magento.com/m1/ee/user_guide/system-operations/browser-capabilities-detection.html);
13 [http://docs.magento.com/m1/ee/user_guide/system-operations/index-](http://docs.magento.com/m1/ee/user_guide/system-operations/index-management.html)
14 [management.html](http://docs.magento.com/m1/ee/user_guide/system-operations/index-management.html); [http://docs.magento.com/m1/ce/user_guide/cms/magento-](http://docs.magento.com/m1/ce/user_guide/cms/magento-cms.html)
15 [cms.html](http://docs.magento.com/m1/ce/user_guide/cms/magento-cms.html); http://docs.magento.com/m1/ce/user_guide/cms/page-create.html;
16 http://docs.magento.com/m1/ce/user_guide/cms/editor.html;
17 http://docs.magento.com/m1/ce/user_guide/cms/links.html;
18 http://docs.magento.com/m1/ce/user_guide/cms/editor-insert-image.html;
19 http://docs.magento.com/m1/ce/user_guide/cms/editor-add-widget.html;
20 http://docs.magento.com/m1/ce/user_guide/design/page-layout.html;
21 http://docs.magento.com/m1/ce/user_guide/design/layout-updates.html;
22 http://docs.magento.com/m1/ee/user_guide/store-operations/stores-multiple.html;
23 http://docs.magento.com/m1/ee/user_guide/store-operations/store-hierarchy.html;
24 [http://docs.magento.com/m1/ee/user_guide/system-operations/index-](http://docs.magento.com/m1/ee/user_guide/system-operations/index-management.html)
25 [management.html](http://docs.magento.com/m1/ee/user_guide/system-operations/index-management.html).

26 38. Claim 3 of the '397 patent recites the apparatus of claim 2, wherein the
27 database is a multi-dimensional array structured database.
28

1 39. The Accused Instrumentalities infringe claim 3 of the '397 patent
2 through, by way of example, patent through a combination of features which
3 collectively practice each limitation of claim 3.

4 40. By way of example, the JSON strings that are used to generate, in part,
5 field capabilities originate from the database and therefore reflect the database
6 structure and contents showing, on information and belief, the implementation of a
7 multidimensional array structured database. By way of further evidence, the JSON
8 strings show that there are dimensions for various parameters. *See, e.g.*,
9 <https://www.drupal.org/files/issues/Field.png>;
10 <https://api.drupal.org/api/drupal/core%21modules%21field%21field.module/group/field/8.3.x>;
11 <http://devdocs.magento.com/guides/v2.0/get-started/gs-web-api-request.html>.

12 41. Claim 4 of the '397 patent recites the apparatus of claim 3, wherein the
13 representative information is Boolean data, numeric data, string data or multi-
14 dimensional arrays of various multimedia objects.

15 42. The Accused Instrumentalities infringe claim 4 of the '397 patent through
16 a combination of features that practice the limitations of Claim 4. *See, e.g.*,
17 <https://www.drupal.org/docs/8/api/entity-api/defining-and-using-content-entity-field-definitions>;
18 <http://devdocs.magento.com/guides/m1x/api/rest/Resources/Products/products.html>.

19 43. Claim 5 of the '397 patent recites the apparatus of claim 4, wherein said
20 elements include multimedia objects selected from the group consisting of a color, a
21 font, an image, an audio clip, a video clip, a text area and a URL.
22

23 44. The Accused Instrumentalities infringe claim 5 of the '397 patent through
24 a combination of features that practice the limitations of Claim 5.

25 45. By way of example, the Accused Instrumentalities include various
26 multimedia objects selected from a group contained within a WYSIWYG Editor.
27 Examples include color, font, an image, a video, a text area and a URL as they appear
28 in the WYSIWYG Editor. The multimedia objects created in the WYSIWYG editor

1 are stored in the database and appear as HTML scripted text in the database. Text and
2 vector objects can be selected and colored by selecting them or “click and dragging”
3 over them in the WYSIWYG editor. A color may also be selected from the color
4 dropdowns on the control bar of the Editor. This color is saved to the database; as part
5 of the HTML of the description record. Moreover, text objects may be assigned a font
6 by making such a selection or “click and dragging” over them in the WYSIWYG
7 editor. A font can then be selected from the font dropdown on the control bar of the
8 Editor. This font selection is thereafter saved to the database as part of the HTML of
9 the description record. Selecting the Image button in the WYSIWYG editor opens a
10 tabbed panel where the user designates source, title, format, size, etc. The image file
11 is uploaded to the server and the file’s location and style are saved and posted to the
12 database as part of the HTML of the description record. Furthermore, videos are
13 created by clicking on the Media module, which opens a tabbed panel where the user
14 designates URL, format, size, etc. The video’s URL and style elements are saved to
15 the database as part of the HTML of the description record. A text area may also be
16 selected for creation by clicking in the frame of the WYSIWYG Editor and typing.
17 The text and its style are saved to the database as part of the HTML of the description
18 record. After entering text into the WYSIWYG editor’s text area, a URL assigned by
19 clicking and dragging over the text object you wish to link, and then selecting the
20 “chain” link button from the control bar; which opens a tabbed panel where the user
21 can designate the URL, target, etc. The text and its style are saved to the database as
22 part of the HTML of the description record.

23 46. The presence of the above referenced elements are demonstrated, by way
24 of example, by reference to publicly available information. *See, e.g.,*
25 <https://www.drupal.org/project/ckeditor>;
26 <https://www.drupal.org/docs/8/core/modules/ckeditor/overview>;
27 [https://dev.acquia.com/blog/tutorial-drupal-8-wysiwyg-inline-and-responsive-](https://dev.acquia.com/blog/tutorial-drupal-8-wysiwyg-inline-and-responsive-images/10/03/2016/9821)
28 [images/10/03/2016/9821](https://dev.acquia.com/blog/tutorial-drupal-8-wysiwyg-inline-and-responsive-images/10/03/2016/9821); Angela Byron, *Ultimate Guide to Drupal 8* at 4 (2016);

1 [https://dev.acquia.com/blog/tutorial-drupal-8-wysiwyg-inline-and-responsive-](https://dev.acquia.com/blog/tutorial-drupal-8-wysiwyg-inline-and-responsive-images/10/03/2016/9821)
2 [images/10/03/2016/9821;](https://dev.acquia.com/blog/tutorial-drupal-8-wysiwyg-inline-and-responsive-images/10/03/2016/9821)

3 [https://www.drupal.org/docs/8/core/modules/media/overview;](https://www.drupal.org/docs/8/core/modules/media/overview)

4 [https://www.drupal.org/project/media_entity.](https://www.drupal.org/project/media_entity)

5 47. Claim 6 of the '397 patent recites the apparatus of claim 2, wherein said
6 elements are selected from the group consisting of a button, an image, a paragraph, a
7 frame, a table, a form and a vector object.

8 48. The Accused Instrumentalities infringe claim 6 of the '397 patent
9 through a combination of features that practice the limitations of Claim 6.

10 49. By way of example, the Accused Instrumentalities include various user
11 selectable menus where various elements can be placed on a web page. Those various
12 user selectable menus are used to place elements selected from the group consisting of
13 a button, an image, a paragraph, a frame, a table, a form and a vector object. The cells
14 of a table and maps would reside in a frame, and that, dividers, maps and the lines in
15 tables would be, at least in part, vector objects.

16 50. The presence of the above referenced elements are demonstrated, by way
17 of example, by reference to publicly available information. *See, e.g.,*

18 [https://www.drupal.org/project/ckeditor;](https://www.drupal.org/project/ckeditor)

19 [https://www.drupal.org/docs/8/core/modules/ckeditor/overview;](https://www.drupal.org/docs/8/core/modules/ckeditor/overview)

20 [https://dev.acquia.com/blog/tutorial-drupal-8-wysiwyg-inline-and-responsive-](https://dev.acquia.com/blog/tutorial-drupal-8-wysiwyg-inline-and-responsive-images/10/03/2016/9821)
21 [images/10/03/2016/9821;](https://dev.acquia.com/blog/tutorial-drupal-8-wysiwyg-inline-and-responsive-images/10/03/2016/9821) Angela Byron, *Ultimate Guide to Drupal 8* at 4 (2016);

22 [https://www.drupal.org/docs/8/core/modules/custom_block/overview;](https://www.drupal.org/docs/8/core/modules/custom_block/overview)

23 [https://www.drupal.org/docs/8/core/modules/contact/overview.](https://www.drupal.org/docs/8/core/modules/contact/overview)

24 51. Claim 9 recites the apparatus of claim 2, wherein said elements include a
25 button or an images, wherein said selectable settings include the selection of an
26 element style, and wherein said build tool includes means for storing information
27 representative of selected style in a database.

28

1 52. The Accused Instrumentalities infringe claim 9 of the '397 patent through
2 a combination of features which collectively practice each limitation of claim 9. *See,*
3 *e.g.*, <https://www.drupal.org/project/ckeditor>;
4 <https://www.drupal.org/docs/8/core/modules/ckeditor/overview>;
5 [https://dev.acquia.com/blog/tutorial-drupal-8-wysiwyg-inline-and-responsive-](https://dev.acquia.com/blog/tutorial-drupal-8-wysiwyg-inline-and-responsive-images/10/03/2016/9821)
6 [images/10/03/2016/9821](https://dev.acquia.com/blog/tutorial-drupal-8-wysiwyg-inline-and-responsive-images/10/03/2016/9821);
7 <https://www.drupal.org/docs/8/core/modules/image/working-with-images>;
8 <https://www.drupal.org/docs/7/understanding-drupal/technology-stack>;
9 <https://www.drupal.org/docs/8/system-requirements/web-server>;
10 <https://www.drupal.org/docs/8/core/modules/rest/overview>;
11 <https://www.drupal.org/docs/8/core/modules/serialization/overview>;
12 <https://www.drupal.org/docs/8/understanding-drupal-8/overview>;
13 <https://www.drupal.org/docs/develop/standards/css/css-architecture-for-drupal-8>.

14 53. Claim 10 recites the apparatus of claim 9, wherein said elements are
15 described by multiple object states.

16 54. The Accused Instrumentalities infringe claim 10 of the '397 patent
17 through a combination of features which collectively practice each limitation of claim
18 10. For example, buttons can have multiple object states. *See, e.g.*,
19 <https://www.drupal.org/docs/8/core/themes/seven-theme>

20 55. Claim 11 recites the apparatus of claim 9, wherein said elements are
21 described by a transformation or a timelines of said selected styles.

22 56. The Accused Instrumentalities infringe claim 11 of the '397 patent
23 through a combination of features which collectively practice each limitation of claim
24 11. By way of example, the Accused Instrumentalities support CSS architecture. *See,*
25 *e.g.*, <https://www.drupal.org/docs/develop/standards/css/css-architecture-for-drupal-8>;
26 *see also, e.g.*, <http://demos.dojotoolkit.org/demos/css3/demo.html>.

27 57. Claim 14 recites the apparatus of claim 2, wherein said elements include
28 buttons or images, wherein said description of elements is a transition or a timeline

1 which is selected according to input from a mouse, and wherein said build tool
2 includes means for storing information representative of said selected description of
3 elements in said database.

4 58. The Accused Instrumentalities infringe claim 14 of the '397 patent
5 through a combination of features which collectively practice each limitation of claim
6 14.

7 59. By way of example, the Accused Instrumentalities include various CSS
8 libraries that are used extensively for adding transformations and timelines to selected
9 elements. *See, e.g.*, [https://www.drupal.org/docs/develop/standards/css/css-
10 architecture-for-drupal-8](https://www.drupal.org/docs/develop/standards/css/css-architecture-for-drupal-8); <http://demos.dojotoolkit.org/demos/css3/demo.html>.

11 60. Claim 15 recites the apparatus of claim 14, wherein at least one of said
12 description of elements is a timeline or an animation.

13 61. The Accused Instrumentalities infringe claim 15 of the '397 patent
14 through a combination of features which collectively practice each limitation of claim
15 15.

16 62. By way of example, the Accused Instrumentalities enable descriptions of
17 elements describing CSS animations. *See, e.g.*,
18 <https://www.drupal.org/docs/develop/standards/css/css-architecture-for-drupal-8>;
19 <http://demos.dojotoolkit.org/demos/css3/demo.html>.

20 63. Claim 17 recites the apparatus of claim 2, wherein one or more of said
21 elements is a button or an image, wherein said description of elements is a transition,
22 an animation or a timeline, and wherein said build engine includes means to
23 synchronize said description of said one or more elements.

24 64. The Accused Instrumentalities infringe claim 17 of the '397 patent
25 through a combination of features which collectively practice each limitation of claim
26 17.

27 65. By way of example, the Accused Instrumentalities enable the definition
28 of certain parent elements and child element in certain classes, which can include the

1 URL for an image, in the database, and that also can be zoomed. The parent element
2 can include two transform styles, such as one for the parent and one for its lens.

3 66. Claim 20 recites the apparatus of claim 2, wherein at least one of said
4 elements is a child button or a child object, wherein said description of said elements
5 is a timeline, a transition or an animation, and wherein said build engine includes
6 means for defining said description of said element.

7 67. The Accused Instrumentalities infringe claim 20 of the '397 patent
8 through a combination of features which collectively practice each limitation of claim
9 20.

10 68. By way of example, the Accused Instrumentalities enable the description
11 of elements as timelines or transition. Moreover, the build engine includes the means
12 for defining said description of said element through a choice of menu items through
13 the design tab of the Product Information Admin Panel.

14 69. Claim 24 recites the apparatus of claim 2, wherein said run time files
15 include one compressed website specific, customized run time engine program file
16 and one compressed website specific, customized run time engine library file.

17 70. The Accused Instrumentalities infringe claim 24 of the '397 patent
18 through a combination of features which collectively practice each limitation of claim
19 24.

20 71. By way of example, the Accused Instrumentalities include two
21 customized runtime files, an HTML file and a second unique CSS file. *See, e.g.,*
22 <https://www.drupal.org/docs/7/understanding-drupal/technology-stack>;
23 <https://www.drupal.org/docs/8/system-requirements/web-server>;
24 <https://www.drupal.org/docs/8/core/modules/rest/overview>;
25 <https://www.drupal.org/docs/8/core/modules/serialization/overview>;
26 <https://www.drupal.org/docs/8/understanding-drupal-8/overview>;
27 <https://www.drupal.org/docs/develop/standards/css/css-architecture-for-drupal-8>.

28

1 72. Claim 25 recites the apparatus of claim 24, wherein said run time files
2 include a dynamic web page scaling mechanism, whereby each of said one or more
3 generated web pages is scaled for viewing on said display.

4 73. The Accused Instrumentalities infringe claim 25 of the '397 patent
5 through a combination of features which collectively practice each limitation of claim
6 25.

7 74. By way of example, the Accused Instrumentalities enable rescaling of a
8 web page to the size of the particular screen that is being used. *See, e.g.*,
9 <https://www.drupal.org/docs/8/mobile/responsive-web-design>;
10 <https://www.drupal.org/docs/8/mobile/web-based-mobile-apps>.

11 75. Claim 35 of the '397 patent generally recites the apparatus of claim 2,
12 wherein the build tool includes dynamic resizing means operable to redefine a size of
13 a web page upon being display.

14 76. The Accused Instrumentalities infringe claim 35 of the '397 patent
15 through a combination of features which collectively practice each limitation of claim
16 35.

17 77. By way of example, the Accused Instrumentalities enable dynamic
18 resizing upon display to a different device and screen. For example, the Accused
19 Instrumentalities include "Responsive Web Design." Responsive Web Design refers
20 to web design that changes formatting and lay-out to respond to different devices,
21 screen sizes and browser capabilities. The Accused Instrumentalities therefore enable
22 the creation of web pages that may be viewed with resizing means operable to
23 redefine a size of a web page upon being displayed. *See, e.g.*,

24 http://www.w3schools.com/html/html_responsive.asp;
25 <https://www.drupal.org/docs/8/mobile/responsive-web-design>;
26 <https://www.drupal.org/docs/8/mobile/web-based-mobile-apps>.

27 78. Claim 37 of the '397 patent generally recites [a]n apparatus for producing
28 websites with web page(s) on and for a computer with a browser and a virtual

1 machine, the apparatus comprising: an interface for building a website through control
2 of website elements, being operable through the browser on to: present a selectable
3 settings menu, accept settings, and generate the display in accordance with an
4 assembly of settings contemporaneously with the acceptance thereof, at least one
5 setting being operable to generate said display through commands to said virtual
6 machine; an internal database associated with the interface for storing information
7 representative of one or more of assembly of settings for controlling elements of the
8 website; and a build tool to construct web page(s) of the website having: an external
9 database containing data corresponding to the information stored in the internal
10 database, and one or more run time files, where said run time files use information
11 stored in the external database to generate virtual machine commands for the display
12 of at least a portion of one or more web pages.

13 79. The Accused Instrumentalities infringe claim 37 of the '397 patent
14 through a combination of features which collectively practice each limitation of claim
15 37. By way of example, modern internet browsers such as Microsoft Internet
16 Explorer, Mozilla's Firefox, Apple Safari, Google Chrome, and Opera include virtual
17 machines within the meaning of the '397 patent. (*See, e.g.*,
18 <http://developer.telerik.com/featured/a-guide-to-javascript-engines-for-idiots/>;
19 <http://dictionary.reference.com/browse/virtual+machine?s=t>). The Accused
20 Instrumentalities support the use of the latest versions of Internet Explorer 11 or later,
21 Microsoft Edge, latest-1, Firefox latest, latest-1, Chrome latest, latest-1, Safari latest,
22 latest-1 (Mac OS), Safari Mobile for iPad 2, iPad Mini, iPad with Retina Display (iOS
23 7 or later), for desktop site, Safari Mobile for iPhone 4 or later; iOS 7 or later, for
24 mobile site, Chrome for mobile latest-1 (Android 4 or later) for mobile site, where
25 *latest-1* means one major version earlier than the latest released version. (*See*
26 <https://www.drupal.org/docs/8/system-requirements/browser-requirements>;
27 [http://devdocs.magento.com/guides/v2.0/install-gde/system-](http://devdocs.magento.com/guides/v2.0/install-gde/system-requirements_browsers.html)
28 [requirements_browsers.html](http://devdocs.magento.com/guides/v2.0/install-gde/system-requirements_browsers.html).)

1 80. By way of example, the Accused Instrumentalities include various
2 multimedia objects selected from a group contained within a WYSIWYG Editor.
3 Examples include color, font, an image, a video, a text area and a URL as they appear
4 in the WYSIWYG Editor. The multimedia objects created in the WYSIWYG editor
5 are stored in the database and appear as HTML scripted text in the database. Text and
6 vector objects can be selected and colored by selecting them or “clicking and
7 dragging” over them in the WYSIWYG editor. A color may also be selected from the
8 color dropdowns on the control bar of the Editor. This color is saved to the database;
9 as part of the HTML of the description record. Moreover, text objects may be assigned
10 a font by making such a selection or “click and dragging” over them in the
11 WYSIWYG editor. A font can then be selected from the font dropdown on the
12 control bar of the Editor. This font selection is thereafter saved to the database as part
13 of the HTML of the description record. Selecting the Image button in the WYSIWYG
14 editor opens a tabbed panel where the user designates source, title, format, size, etc.
15 The image file is uploaded to the server and the file’s location and style are saved and
16 posted to the database as part of the HTML of the description record. Furthermore,
17 videos are created by clicking on the Media module, which opens a tabbed panel
18 where the user designates URL, format, size, etc. The video’s URL and style
19 elements are saved to the database as part of the HTML of the description record. A
20 text area may also be selected for creation by clicking in the frame of the WYSIWYG
21 Editor and typing. The text and its style are saved to the database as part of the
22 HTML of the description record. After entering text into the WYSIWYG editor’s text
23 area, a URL assigned by clicking and dragging over the text object you wish to link,
24 and then selecting the “chain” link button from the control bar; which opens a tabbed
25 panel where the user can designate the URL, target, etc. The text and its style are
26 saved to the database as part of the HTML of the description record.

27 81. Furthermore, the Accused Instrumentalities enable data from the client-
28 side form referenced to be stored in a server-side database.

1 82. The presence of the above referenced elements are demonstrated, by way
2 of example, by reference to publicly available information. *See, e.g.*,
3 <https://www.drupal.org/home>; [https://www.drupal.org/docs/8/system-](https://www.drupal.org/docs/8/system-requirements/browser-requirements)
4 [requirements/browser-requirements](https://www.drupal.org/docs/8/system-requirements/browser-requirements); <https://www.drupal.org/project/ckeditor>;
5 <https://www.drupal.org/docs/8/core/modules/ckeditor/overview>;
6 [https://dev.acquia.com/blog/tutorial-drupal-8-wysiwyg-inline-and-responsive-](https://dev.acquia.com/blog/tutorial-drupal-8-wysiwyg-inline-and-responsive-images/10/03/2016/9821)
7 [images/10/03/2016/9821](https://dev.acquia.com/blog/tutorial-drupal-8-wysiwyg-inline-and-responsive-images/10/03/2016/9821); Angela Byron, *Ultimate Guide to Drupal 8* at 4 (2016);
8 https://www.drupal.org/project/save_draft;
9 <https://www.drupal.org/docs/7/understanding-drupal/technology-stack>;
10 <https://www.drupal.org/docs/8/system-requirements/web-server>;
11 <https://www.drupal.org/docs/8/core/modules/rest/overview>;
12 <https://www.drupal.org/docs/8/core/modules/serialization/overview>;
13 <https://www.drupal.org/docs/8/understanding-drupal-8/overview>;
14 <https://www.drupal.org/docs/develop/standards/css/css-architecture-for-drupal-8>;
15 [http://docs.magento.com/m1/ee/user_guide/system-operations/index-](http://docs.magento.com/m1/ee/user_guide/system-operations/index-management.html)
16 [management.html](http://docs.magento.com/m1/ee/user_guide/system-operations/index-management.html); [http://docs.magento.com/m1/ee/user_guide/design/layout-](http://docs.magento.com/m1/ee/user_guide/design/layout-updates.html)
17 [updates.html](http://docs.magento.com/m1/ee/user_guide/design/layout-updates.html); [http://docs.magento.com/m1/ee/user_guide/system-operations/cache-](http://docs.magento.com/m1/ee/user_guide/system-operations/cache-page.html?Highlight=database%20retrieval)
18 [page.html?Highlight=database%20retrieval](http://docs.magento.com/m1/ee/user_guide/system-operations/cache-page.html?Highlight=database%20retrieval);
19 http://docs.magento.com/m1/ee/user_guide/system-operations/media-storage.html;
20 [http://docs.magento.com/m1/ee/user_guide/system-operations/media-storage-](http://docs.magento.com/m1/ee/user_guide/system-operations/media-storage-database.html)
21 [database.html](http://docs.magento.com/m1/ee/user_guide/system-operations/media-storage-database.html);
22 [http://docs.magento.com/m1/ee/user_guide/Resources/pdf/magento_enterprise_edition](http://docs.magento.com/m1/ee/user_guide/Resources/pdf/magento_enterprise_edition_user_guide.pdf)
23 [_user_guide.pdf](http://docs.magento.com/m1/ee/user_guide/Resources/pdf/magento_enterprise_edition_user_guide.pdf); [http://docs.magento.com/m1/ee/user_guide/store-operations/stores-](http://docs.magento.com/m1/ee/user_guide/store-operations/stores-multiple.html)
24 [multiple.html](http://docs.magento.com/m1/ee/user_guide/store-operations/stores-multiple.html); [http://docs.magento.com/m1/ee/user_guide/store-operations/store-](http://docs.magento.com/m1/ee/user_guide/store-operations/store-hierarchy.html)
25 [hierarchy.html](http://docs.magento.com/m1/ee/user_guide/store-operations/store-hierarchy.html); [http://docs.magento.com/m1/ee/user_guide/system-](http://docs.magento.com/m1/ee/user_guide/system-operations/browser-capabilities-detection.html)
26 [operations/browser-capabilities-detection.html](http://docs.magento.com/m1/ee/user_guide/system-operations/browser-capabilities-detection.html);
27 http://docs.magento.com/m1/ce/user_guide/design/page-layout.html;
28 http://docs.magento.com/m1/ce/user_guide/design/layout-updates.html; and

1 http://docs.magento.com/m1/ee/user_guide/Resources/pdf/magento_enterprise_edition
2 [_user_guide.pdf](http://docs.magento.com/m1/ee/user_guide/Resources/pdf/magento_enterprise_edition_user_guide.pdf).

3 83. Upon information and belief, these Accused Instrumentalities are used,
4 marketed, provided to, and or used by or for each of Defendant's partners, clients,
5 customers, and/or end users across the country and in this District.

6 84. In particular, Defendant's actions that aid and abet others such as its
7 partners, customers, clients, and/or end users to infringe include advertising and
8 distributing the Accused Instrumentalities and providing instruction materials,
9 training, and services regarding the Accused Instrumentalities. *See, e.g.*,
10 [https://blogs.perficientdigital.com/2019/05/02/webinar-minimize-security-risks-with-](https://blogs.perficientdigital.com/2019/05/02/webinar-minimize-security-risks-with-a-magento-2-upgrade/)
11 [a-magento-2-upgrade/](https://blogs.perficientdigital.com/2019/05/02/webinar-minimize-security-risks-with-a-magento-2-upgrade/); [https://www.perficientdigital.com/magento-2-upgrade-](https://www.perficientdigital.com/magento-2-upgrade-services)
12 [services](https://www.perficientdigital.com/magento-2-upgrade-services). On information and belief, Defendant has engaged in such actions with
13 specific intent to cause infringement or with willful blindness to the resulting
14 infringement because Defendant has had actual knowledge of the '397 patent and
15 knowledge that its acts were inducing infringement of the '397 patent since at least the
16 date Perficient received notice that such activities infringed the '397 patent.

17 85. Upon information and belief, Defendant is liable as a contributory
18 infringer of the '397 patent under 35 U.S.C. § 271(c) by offering to sell, selling and
19 importing into the United States website authoring tools to be especially made or
20 adapted for use in an infringement of the '397 patent. The Accused Instrumentalities
21 are a material component for use in practicing the '397 patent and are specifically
22 made and are not a staple article of commerce suitable for substantial non-infringing
23 use.

24 86. Defendant was made aware of the '397 patent and its infringement
25 thereof at least as early as the filing of this Complaint.

26 87. Since the date of the filing of this Complaint, Defendant's infringement
27 of the '397 patent has been willful.
28

1 88. Plaintiff has not sold any product nor offered a service within the scope
2 of any claim of the '397 patent. In addition, prior to August 12, 2015, no license to
3 the '397 patent had been granted.

4 89. Plaintiff has been harmed by Defendant's infringing activities.

5 **COUNT II – INFRINGEMENT OF U.S. PATENT NO. 7,594,168**

6 90. The allegations set forth in the foregoing paragraphs 1 through 77 are
7 incorporated into this Second Claim for Relief.

8 91. On September 22, 2009, U.S. Patent No. 7,594,168 entitled *Browser*
9 *Based Web Site Generation Tool and Run Time Engine* was duly and legally issued by
10 the United States Patent and Trademark Office. A true and correct copy of the '168
11 patent is attached as Exhibit E.

12 92. The inventions of the '168 patent resolve technical problems related to
13 website creation and generation. For example, the inventions enable the creation of
14 websites through browser-based build tools and a user interface, which features are
15 exclusively implemented utilizing computer technology.

16 93. The claims of the '168 patent do not merely recite the performance of
17 some business practice known from the pre-Internet world along with the requirement
18 to perform it on the Internet. Instead, the claims of the '168 patent recite one or more
19 inventive concepts that are rooted in computerized website creation technology, and
20 overcome problems specifically arising in the realm of computerized website creation
21 technologies.

22 94. The claims of the '168 patent recite an invention that is not merely the
23 routine or conventional use of website creation systems and methods. Instead, the
24 invention describes a browser-based website creation system including a server
25 comprising a build engine configured to create and apply styles to, for example, a
26 website with web pages comprised of objects.

27
28

1 95. The technology claimed in the '168 patent does not preempt all ways of
2 using website or web page authoring tools nor preempt the use of all website or web
3 page authoring tools, nor preempt any other well-known or prior art technology.

4 96. Accordingly, each claim of the '168 patent recites a combination of
5 elements sufficient to ensure that the claim in practice amounts to significantly more
6 than a patent on an ineligible concept.

7 97. As noted above and incorporated into this Second Claim for Relief,
8 defendants in other cases in which the '397 and '168 patents were asserted, asserted
9 that the '397 and '168 patents were invalid under 35 U.S.C. § 101. Those motions
10 and related Orders are discussed above.

11 98. Plaintiff is the assignee and owner of the right, title and interest in and to
12 the '168 patent, including the right to assert all causes of action arising under said
13 patents and the right to any remedies for infringement of them.

14 99. Upon information and belief, Defendant has and continues to directly
15 infringe at least claims 1-6 of the '168 patent by using a browser-based website and/or
16 web page authoring tool in which the user-selected settings representing website
17 elements are stored in a database, and retrieval of said information to generate said
18 website (the "Accused Instrumentalities"). The Accused Instrumentalities include but
19 are not limited website building tools used and/or provided by Defendant, such as, for
20 example Drupal and/or Magento. *See, e.g.*, [https://www.perficientdigital.com/our-](https://www.perficientdigital.com/our-work/hunter-douglas)
21 [work/hunter-douglas](https://www.perficient.com/partners/magento); and <https://www.perficient.com/partners/magento>.

22 100. In particular, claim 1 of the '168 patent generally recites a system for
23 assembling a website comprising a server with a build engine, the website comprising
24 web pages with objects (one button or one image object), the server accepting user
25 input to associate a style with objects, wherein a button or image object is associated
26 with a style that includes values defining transformations and time lines; wherein each
27 web page is defined entirely by the objects and the style associated with the object,
28 produce a database with a multidimensional array comprising the objects that

1 comprise the website including data defining the object style, number, and an
2 indication of the web page that each object is part of, and provide the database to a
3 server accessible to web browser; wherein the database is produced such that a web
4 browser with access to a runtime engine is configured to generate the website from the
5 objects and style data extracted from the provided database.

6 101. The Accused Instrumentalities infringe claim 1 of the '168 patent through
7 a combination of features which collectively practice each limitation of claim 1. (*See*,
8 *e.g.*, https://developer.mozilla.org/en-US/docs/Web/API/Document_Object_Model,
9 http://www.w3schools.com/js/js_htmldom.asp.)

10 102. Further, by way of example, the JSON strings that are used by the
11 Accused Instrumentalities to generate, in part, element formatting originate from the
12 database and therefore reflect the database structure and contents showing, on
13 information and belief, the implementation of a multidimensional array structured
14 database comprising the objects that comprise the web site. By way of further
15 evidence, the JSON strings show that there are dimensions for the pages, for arrays of
16 columns, for arrays of sections, and for arrays of modules generated using the
17 Accused Instrumentalities. *See, e.g.*,
18 <https://api.drupal.org/api/drupal/core%21modules%21field%21field.module/group/field/8.3.x>
19

20 103. Further, the Accused Instrumentalities enable the storing in the database
21 of data defining each object such as object styles, an object number, and an indication
22 of the which page each object is a part of. For example, a user can select a theme
23 style for a body title on a specific page. The CSS database file is thereafter saved to
24 the server, reflecting the selected font, size, and the object and page to which it
25 applies.

26 104. By way of example, for the completed web site, the Accused
27 Instrumentalities include runtime files, such as, for example HTML CSS files. *See*,
28 *e.g.*, <https://www.drupal.org/home>; <https://www.drupal.org/docs/8/system->

1 requirements/browser-requirements; <https://www.drupal.org/project/ckeditor>;
2 <https://www.drupal.org/docs/8/core/modules/ckeditor/overview>;
3 [https://dev.acquia.com/blog/tutorial-drupal-8-wysiwyg-inline-and-responsive-](https://dev.acquia.com/blog/tutorial-drupal-8-wysiwyg-inline-and-responsive-images/10/03/2016/9821)
4 [images/10/03/2016/9821](https://dev.acquia.com/blog/tutorial-drupal-8-wysiwyg-inline-and-responsive-images/10/03/2016/9821); Angela Byron, *Ultimate Guide to Drupal 8* at 4 (2016);
5 <https://www.drupal.org/docs/7/understanding-drupal/technology-stack>;
6 <https://www.drupal.org/docs/8/system-requirements/web-server>;
7 <https://www.drupal.org/docs/8/core/modules/rest/overview>;
8 <https://www.drupal.org/docs/8/core/modules/serialization/overview>;
9 <https://www.drupal.org/docs/8/understanding-drupal-8/overview>;
10 <https://www.drupal.org/docs/develop/standards/css/css-architecture-for-drupal-8>;
11 <https://www.drupal.org/docs/8/core/modules/media/overview>;
12 https://www.drupal.org/project/media_entity;
13 <https://www.drupal.org/docs/8/core/modules/image/working-with-images>;
14 <http://demos.dojotoolkit.org/demos/css3/demo.html>;
15 <https://www.drupal.org/files/issues/Field.png>;
16 <https://api.drupal.org/api/drupal/core%21modules%21field%21field.module/group/field/8.3.x>; https://www.drupal.org/project/save_draft.

18 105. Claim 2 of the '168 patent generally recites the system of claim 1,
19 wherein one of said plurality of objects is a child, and wherein the build engine is
20 configured to accept user input to associate a style with child button and child image
21 objects.

22 106. The Accused Instrumentalities infringe claim 2 of the '168 patent
23 through a combination of features which collectively practice each limitation of claim
24 2.

25 107. By way of example from Express Mobile's investigatory use of the
26 Accused Instrumentalities, users of the Accused Instrumentalities are able to access
27 child element images by clicking on a parent element which unlock additional images
28 related to a product being viewed.

1 108. Claim 3 of the '168 patent generally recites the system of claim 2,
2 wherein at least one of said styles includes values defining timelines for child button
3 and child image objects.

4 109. The Accused Instrumentalities infringe claim 3 of the '168 patent
5 through a combination of features which collectively practice each limitation of claim
6 3.

7 110. By way of example, the Accused Instrumentalities incorporate various
8 CSS libraries, and CSS-animations and CSS-transitions are used extensively for
9 adding transformations and timelines to selected elements. On information and belief,
10 this includes timelines for child buttons and child image objects. *See*
11 [http://docs.magento.com/m1/ee/user_guide/cms/banner-](http://docs.magento.com/m1/ee/user_guide/cms/banner-rotator.html?Highlight=carousel)
12 [rotator.html?Highlight=carousel](http://docs.magento.com/m1/ee/user_guide/cms/banner-rotator.html?Highlight=carousel).

13 111. Claim 4 of the '168 patent generally recites the system of claim 1,
14 wherein at least one of said styles includes settings for multiple object states.

15 112. The Accused Instrumentalities infringe claim 4 of the '168 patent through
16 a combination of features which collectively practice each limitation of claim 4.

17 113. By way of example, the Accused Instrumentalities enable the ability to
18 define a hover state, so that an element, including a button, has defined styles. *See,*
19 *e.g.*, <https://www.drupal.org/docs/8/core/themes/seven-theme>.

20 114. Claim 5 of the '168 patent generally recites the system of claim 1,
21 further including file size reduction means for reducing total size of files generated by
22 said build engine to a size between 12k and 50k.

23 115. On information and belief, the Accused Instrumentalities infringe claim 5
24 of the '168 patent through a combination of features which collectively practice each
25 limitation of claim 5. *See* [http://docs.magento.com/m1/ee/user_guide/design/merge-](http://docs.magento.com/m1/ee/user_guide/design/merge-css.html?Highlight=css)
26 [css.html?Highlight=css](http://docs.magento.com/m1/ee/user_guide/design/merge-css.html?Highlight=css).

1 116. Claim 6 of the '168 patent generally recites the system of claim 1, where
2 said data is stored as one or more of a Boolean an integer, a string, a floating point
3 variables, or a URL.

4 117. The Accused Instrumentalities infringe claim 6 of the '168 patent through
5 a combination of features which collectively practice each limitation of claim 6. A
6 review of the API documentation behind websites created using the Accused
7 Instrumentalities reveals data that is stored as one or more of a Boolean, an integer, or
8 a string. *See, e.g.*, [https://www.drupal.org/docs/8/api/entity-api/defining-and-using-](https://www.drupal.org/docs/8/api/entity-api/defining-and-using-content-entity-field-definitions)
9 [content-entity-field-definitions](https://www.drupal.org/docs/8/api/entity-api/defining-and-using-content-entity-field-definitions).

10 118. Upon information and belief, these Accused Instrumentalities are used,
11 marketed, provided to, and or used by or for each of Defendant's partners, clients,
12 customers, and/or end users across the country and in this District.

13 119. In particular, Defendant's actions that aid and abet others such as its
14 partners, customers, clients, and/or end users to infringe include advertising and
15 distributing the Accused Instrumentalities and providing instruction materials,
16 training, and services regarding the Accused Instrumentalities. *See, e.g.*,
17 [https://blogs.perficientdigital.com/2019/05/02/webinar-minimize-security-risks-with-](https://blogs.perficientdigital.com/2019/05/02/webinar-minimize-security-risks-with-a-magento-2-upgrade/)
18 [a-magento-2-upgrade/](https://blogs.perficientdigital.com/2019/05/02/webinar-minimize-security-risks-with-a-magento-2-upgrade/); [https://www.perficientdigital.com/magento-2-upgrade-](https://www.perficientdigital.com/magento-2-upgrade-services)
19 [services](https://www.perficientdigital.com/magento-2-upgrade-services). On information and belief, Defendant has engaged in such actions with
20 specific intent to cause infringement or with willful blindness to the resulting
21 infringement because Defendant has had actual knowledge of the '168 patent and
22 knowledge that its acts were inducing infringement of the '397 patent since at least the
23 date Perficient received notice that such activities infringed the '168 patent.

24 120. Upon information and belief, Defendant is liable as a contributory
25 infringer of the '168 patent under 35 U.S.C. § 271(c) by offering to sell, selling and
26 importing into the United States website authoring tools to be especially made or
27 adapted for use in an infringement of the '168 patent. The Accused Instrumentalities
28 are a material component for use in practicing the '168 patent and are specifically

1 made and are not a staple article of commerce suitable for substantial non-infringing
2 use.

3 121. Defendant was made aware of the '168 patent and its infringement
4 thereof at least as early as the filing of this Complaint.

5 122. Since the date of the filing of this Complaint, Defendant's infringement
6 of the '168 patent has been willful.

7 123. Plaintiff has not sold any product nor offered a service within the scope
8 of any claim of the '168 patent. In addition, prior to August 12, 2015, no license to
9 the '168 patent had been granted.

10 124. Plaintiff has been harmed by Defendant's infringing activities.

11 **JURY DEMAND**

12 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands
13 a trial by jury on all issues triable as such.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff demands judgment for itself and against Defendant as
16 follows:

17 A. An adjudication that Defendant has infringed the '397 and '168 patents;

18 B. An award of damages to be paid by Defendant adequate to compensate
19 Plaintiff for Defendant's past infringement of the '397 and '168 patents, and any
20 continuing or future infringement through the date such judgment is entered, including
21 interest, costs, expenses and an accounting of all infringing acts including, but not
22 limited to, those acts not presented at trial;

23 C. A declaration that this case is exceptional under 35 U.S.C. § 285, and an
24 award of Plaintiff's reasonable attorneys' fees; and

25 D. An award to Plaintiff of such further relief at law or in equity as the
26 Court deems just and proper.

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Dated: June 12, 2019

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