

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION

ONSTREAM MEDIA CORPORATION,

Plaintiff,

v.

FACEBOOK, INC.,

Defendant.

Case No. 6:19-cv-00708

Jury Trial Demanded

**COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Onstream Media Corporation (“Onstream”) files this Complaint against Facebook, Inc. (“Facebook”) for patent infringement of United States Patent Nos. 9,161,068; 9,467,728; 10,038,930; and 10,200,648 (the “patents-in-suit”) (Exhibits 1-4) and alleges as follows:

**NATURE OF THE ACTION**

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

**THE PARTIES**

2. Plaintiff Onstream Media Corporation is a corporation organized under laws of the State of Florida with its principal place of business at 1451 W. Cypress Creek Rd., No. 204, Ft. Lauderdale, FL 33309.

3. On information and belief, Defendant Facebook, Inc. is incorporated under the laws of the State of Delaware with its principal place of business at 1 Hacker Way, Bldg. 10, Menlo Park, CA 94025-1456.

4. Facebook may be served with process through its registered agent, Corporation Service Company, DBA CSC – Lawyers Inco, 211 East 7<sup>th</sup> Street, Suite 620, Austin, Texas 78701.

5. On information and belief, since about April 2009, Facebook has been registered to do business in the state of Texas under Texas SOS file number 0801108427.

#### **JURISDICTION AND VENUE**

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.*

7. Facebook is subject to this Court’s personal jurisdiction, in accordance with due process and/or the Texas Long Arm Statute because, in part, Facebook “[r]ecruits Texas residents, directly or through an intermediary located in this state, for employment inside or outside this state.” *See* Tex. Civ. Prac. & Rem. Code § 17.042.

8. This Court has personal jurisdiction over Facebook because it committed and continues to commit acts of infringement in this judicial district in violation of 35 U.S.C. §§ 271(a) and (b). In particular, on information and belief, Facebook has made, used, offered to sell and/or sold infringing products, services and/or systems in this judicial district.

9. On information and belief, Facebook is subject to the Court's jurisdiction because it regularly conducts and solicits business, or otherwise engages in other persistent courses of conduct in this district, and/or derives substantial revenue from the sale and distribution of goods and services provided to individuals and businesses in this district.

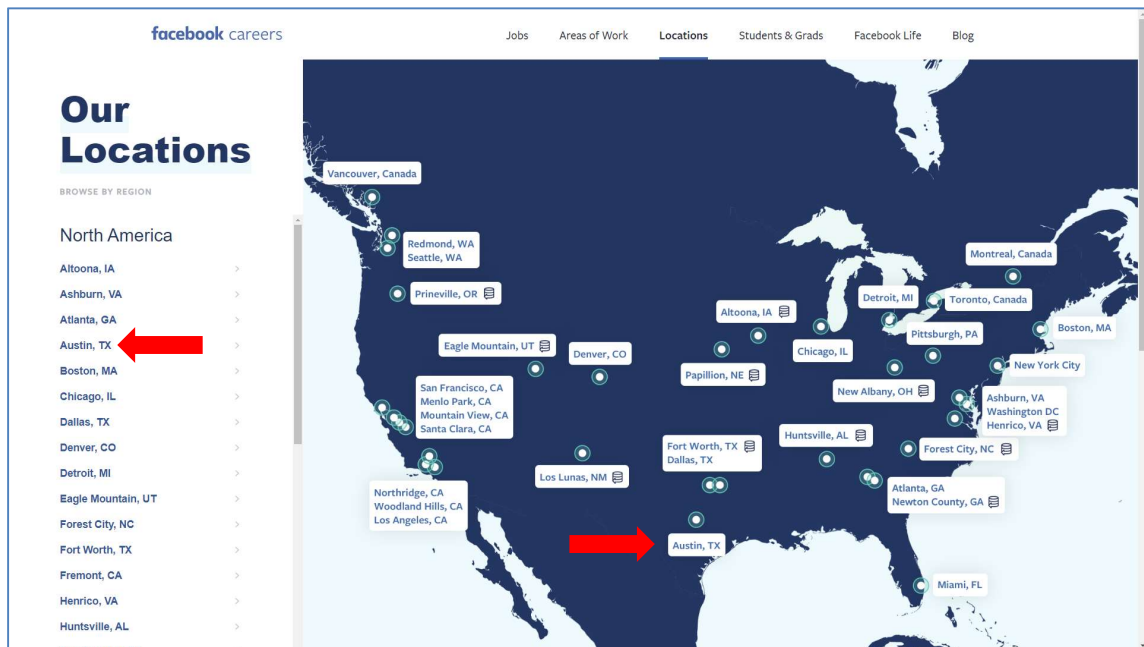
10. This Court has personal jurisdiction over Facebook because, *inter alia*, Facebook, on information and belief: (1) has committed acts of patent infringement in this judicial district, (2) has substantial, continuous, and systematic contacts with this State and this judicial district; (3) owns, manages, and operates facilities in this State and this judicial district; (4) enjoys substantial income from its operations and sales in this State and this judicial district; (5) employs Texas residents in this State and this judicial district, and (6) solicits business and markets products, systems and/or services in this State and judicial district including, without limitation, the infringing Facebook Live platform and related products and services ("Facebook Live").

11. Venue is proper pursuant to 28 U.S.C. §§ 1391(b), (c), (d) and/or 1400(b), at least because Facebook, either directly or through its agents, has committed acts of infringement in this district, and has a regular and established place of business in this district.

12. On information and belief, since at least as early as 2010, Facebook has had a regular and established place of business in this judicial district.<sup>1</sup>

13. On information and belief, Facebook maintains a significant physical presence in this district. For example, Facebook has a large corporate office located at 700 E. 3<sup>rd</sup> Street, Austin TX 78701, <sup>2</sup> (“The Facebook Austin Office”), which is within this judicial district, and which Facebook uses as an established place of business.

14. On information and belief, Facebook’s website indicates that it maintains an office location in Austin, Texas:



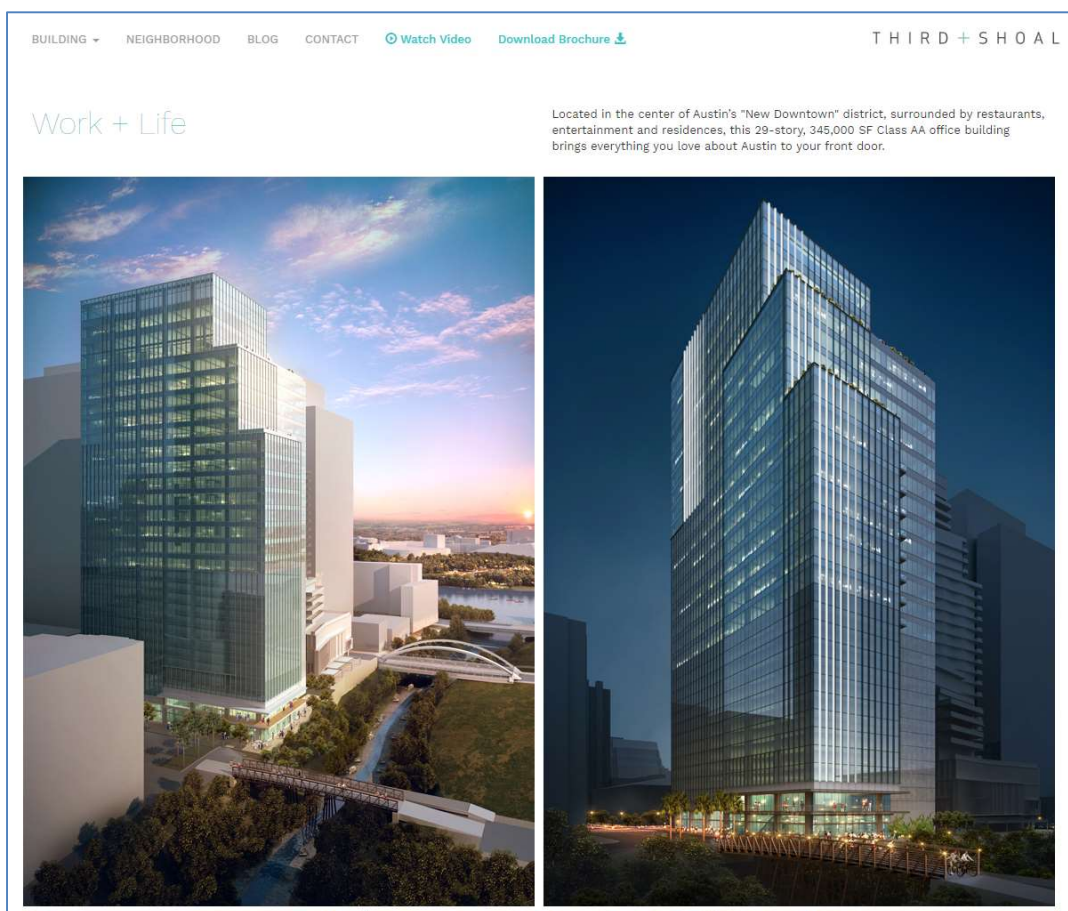
See [https://www.facebook.com/careers/locations/?job\\_region=North%20America](https://www.facebook.com/careers/locations/?job_region=North%20America)

<sup>1</sup> <https://austin.curbed.com/2017/6/15/15801004/facebook-austin-office-expansion-design>

<sup>2</sup> On information and belief, the Facebook Austin Office is housed in a large office building, known as “Third and Shoal” with multiple addresses listed including: 700 E. 3<sup>rd</sup> Street, Austin TX 78701; 601 W. 3<sup>rd</sup> Street, Austin TX 78701;

15. On information and belief, The Facebook Austin Office is “Facebook’s fourth largest office.”<sup>3</sup>

16. On information and belief, The Facebook Austin Office “takes up most of the space at the new Third + Shoal building.”<sup>4</sup> On information and belief, the Third and Shoal building housing The Facebook Austin Office is a 29-story, 345,000 SF Class AA office building:



See <http://www.thirdandshoal.com/building/features.html> .

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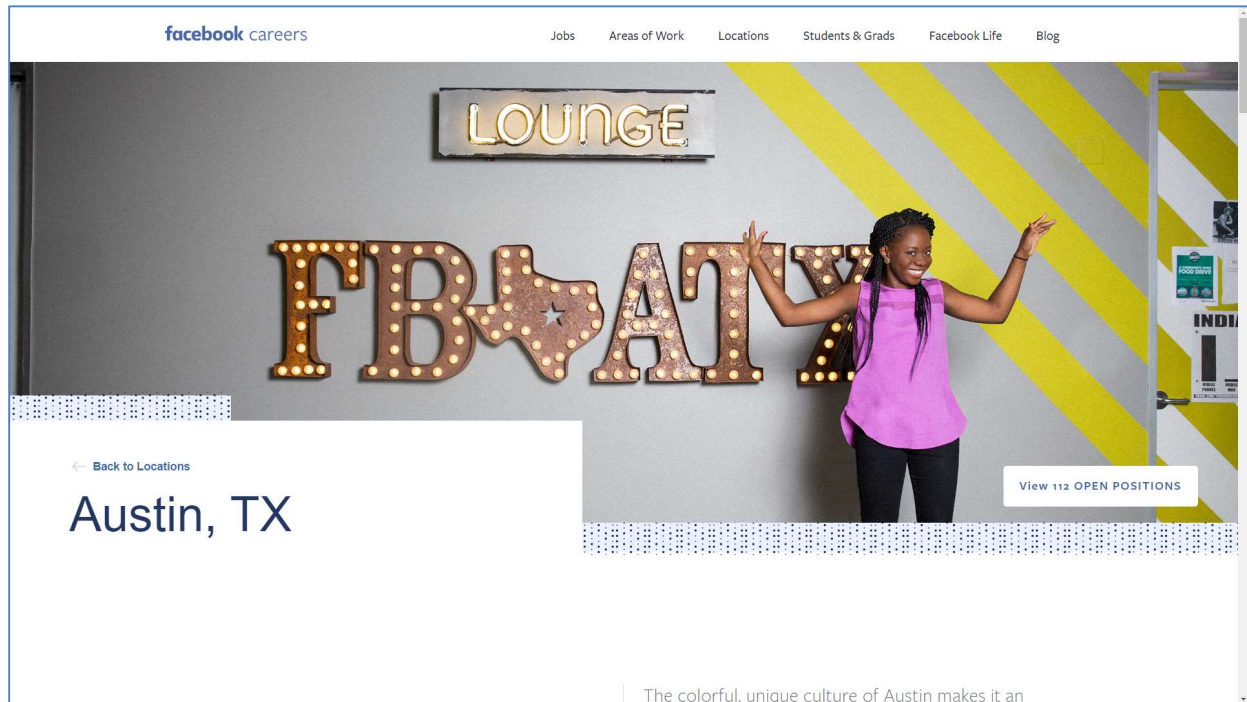
<sup>3</sup> See <https://austin.curbed.com/2019/9/4/20849712/facebook-new-office-austin-open>

<sup>4</sup> See <https://austin.curbed.com/2019/9/4/20849712/facebook-new-office-austin-open>

17. On information and belief, “Facebook occupies more than 256,500 [square feet] of [the Third and Shoal Building] – floors 14-24, specifically, or 11 floors total, with room for at least 1,550 workers.”<sup>5</sup>

18. On information and belief, Facebook currently “employs more than 1,200 people in the city [of Austin].”<sup>6</sup>

19. On information and belief, The Facebook Austin Office is emblazoned with signage indicating Facebook’s operation of a regular and established business at The Facebook Austin Office location:

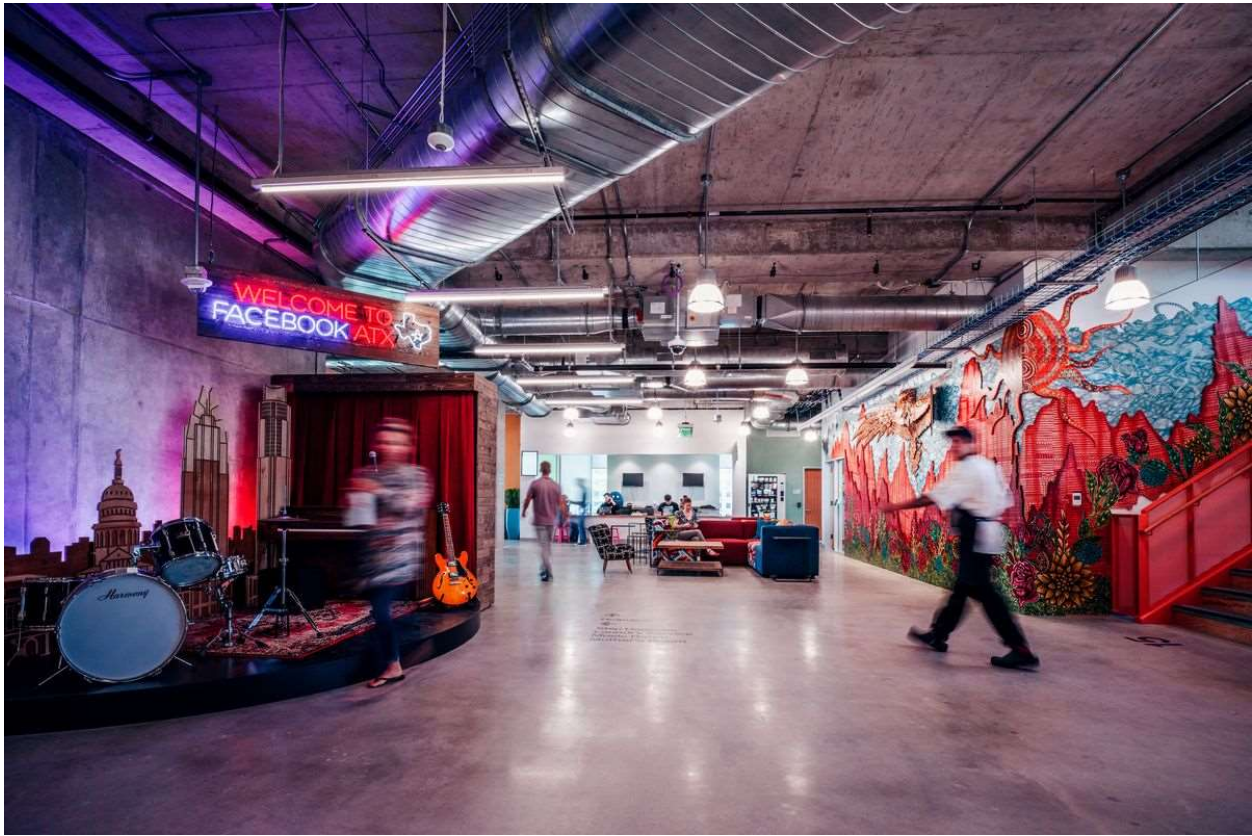


See [https://www.facebook.com/careers/locations/austin/?locations\[0\]=Austin%2C%20TX](https://www.facebook.com/careers/locations/austin/?locations[0]=Austin%2C%20TX)

<sup>5</sup> See <https://austin.curbed.com/2019/9/4/20849712/facebook-new-office-austin-open>

<sup>6</sup> See <https://austin.curbed.com/2019/9/4/20849712/facebook-new-office-austin-open>





See <https://austin.curbed.com/2019/9/4/20849712/facebook-new-office-austin-open>

20. On information and belief, as of the time of the filing of this complaint, Facebook maintains, or has previously maintained, a number of additional offices in the judicial district including at 11601 Altera Pkwy., Austin TX 78758; 300 W. 6<sup>th</sup> Street, Austin TX 78701; and 13011 McCallen Pass, Building D, Austin, TX 78753.

21. On information and belief, the Travis County Appraisal District website indicates that Facebook owns property in the judicial district in the appraised sum of \$26,976,598, located at 300 W. 6<sup>th</sup> Street 1000 Austin, Texas 78701; 600 Congress Avenue 1700 Austin, Texas 78701; 221 W. 6<sup>th</sup> Street 300 Austin, Texas 78701; 11601 Alterra Parkway 1000 Austin, Texas 78758; and 11801 Domain Dr., Fl. 2, Austin, Texas 78758:

Property Address	Owner Name	DBA Name	Appraised Value
300 W 6 ST 1000 AUSTIN, TX 78701	FACEBOOK INC	FACEBOOK	\$17,295,400
600 CONGRESS AVE 1700 AUSTIN, TX 78701	FACEBOOK INC	FACEBOOK	\$1,458,031
221 W 6 ST 300 AUSTIN, TX 78701	FACEBOOK INC	FACEBOOK	\$1,694,486
11601 ALTERRA PARKWAY 1000 AUSTIN, TX 78758	FACEBOOK INC	FACEBOOK	\$5,853,457
11801 DOMAIN DR FL 2 AUSTIN, TX 78758	FACEBOOK INC	FACEBOOK	\$675,224

See <http://propaccess.traviscad.org/clientdb/SearchResults.aspx> .

22. On information and belief, Facebook uses The Facebook Austin Office as a regular and established business location because this corporate office location is home to numerous of Facebook's important employee teams,<sup>7</sup> including the Advertising Technology Team,<sup>8</sup> the Software Engineering Team,<sup>9</sup> the Legal, Finance, Facilities & Admin Team,<sup>10</sup> the Enterprise Engineering Team,<sup>11</sup> the People & Recruiting Team,<sup>12</sup>

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<sup>7</sup> See

[https://www.facebook.com/careers/locations/austin/?locations\[0\]=Austin%2C%20TX](https://www.facebook.com/careers/locations/austin/?locations[0]=Austin%2C%20TX)

<sup>8</sup> See <https://www.facebook.com/careers/areas-of-work/adtech/?teams%5B0%5D=Advertising+Technology>

<sup>9</sup> See <https://www.facebook.com/careers/areas-of-work/engineering/?teams%5B0%5D=Software+Engineering>

<sup>10</sup> See <https://www.facebook.com/careers/areas-of-work/legal/?teams%5B0%5D=Legal%2C+Finance%2C+Facilities+%26+Admin>

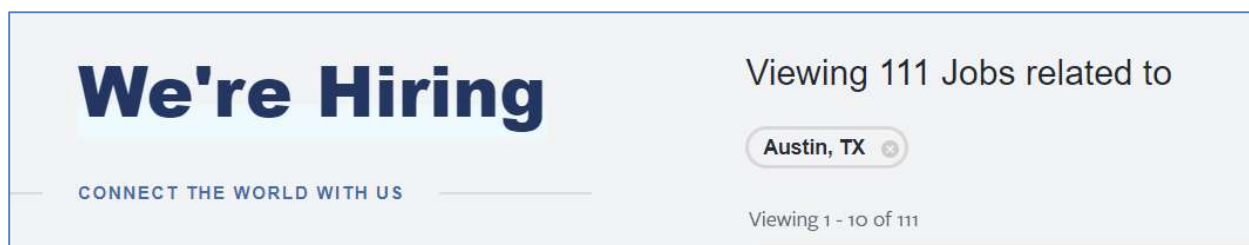
<sup>11</sup> See <https://www.facebook.com/careers/areas-of-work/ee/?teams%5B0%5D=Enterprise+Engineering>

<sup>12</sup> See <https://www.facebook.com/careers/areas-of-work/people/?teams%5B0%5D=People+%26+Recruiting>



the Infrastructure Team,<sup>13</sup> the Data & Analytics Team,<sup>14</sup> the online Operations Team,<sup>15</sup> the Sales & Marketing Team,<sup>16</sup> the Creative Team,<sup>17</sup> and the WhatsApp Team.<sup>18</sup>

23. On information and belief, Facebook is currently advertising approximately 111 open positions in Austin, Texas:



See

[https://www.facebook.com/careers/locations/austin/?locations\[0\]=Austin%2C%20TX](https://www.facebook.com/careers/locations/austin/?locations[0]=Austin%2C%20TX)

24. On information and belief, Facebook has posted job advertisements for senior and high-level employees, who would be assigned to work in The Facebook Austin Office, including to fill positions with the title of: "Director, Product Surface

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<sup>13</sup> See <https://www.facebook.com/careers/areas-of-work/infrastructure/?teams%5B0%5D=Infrastructure>

<sup>14</sup> See <https://www.facebook.com/careers/areas-of-work/data/?teams%5B0%5D=Data+%26+Analytics>

<sup>15</sup> See <https://www.facebook.com/careers/areas-of-work/online-ops/?teams%5B0%5D=Online+Operations>

<sup>16</sup> See <https://www.facebook.com/careers/areas-of-work/marketing/?teams%5B0%5D=Sales+%26+Marketing>

<sup>17</sup> See <https://www.facebook.com/careers/areas-of-work/creative/?teams%5B0%5D=Creative>

<sup>18</sup> See <https://www.facebook.com/careers/areas-of-work/whatsapp/?teams%5B0%5D=WhatsApp>

Operations,"<sup>19</sup> "Director, Global Travel & Expense,"<sup>20</sup> "Director, Employee Experience,"<sup>21</sup> "HR Strategy & Planning Director,"<sup>22</sup> "Director, Small Business Sales Development,"<sup>23</sup> "Head of Workforce Analytics,"<sup>24</sup> "Engineering Manager, Global Operations Engineering,"<sup>25</sup> "Director, HR Technology,"<sup>26</sup> and "Director of Technical Program Management –Business Process & Technology."<sup>27</sup>

25. On information and belief, publicly-available information lists 127 H-1B labor applications that Facebook filed for persons employed in Austin, Texas since 2012.<sup>28</sup> On information and belief, the workers Facebook employs in the judicial district, including but not limited to those workers holding, or who have held, H-1B visas, are highly specialized and important to the regular operation of Facebook because workers holding an H-1B visa are employed in a specialty occupation that requires a "theoretical

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<sup>19</sup> See <https://www.facebook.com/careers/jobs/321066832162158/>

<sup>20</sup> See <https://www.facebook.com/careers/jobs/656885448126418/>

<sup>21</sup> See <https://www.facebook.com/careers/jobs/455834811944260/>

<sup>22</sup> See <https://www.facebook.com/careers/jobs/244882266445193/>

<sup>23</sup> See <https://www.facebook.com/careers/jobs/2497909053765133/>

<sup>24</sup> See <https://www.facebook.com/careers/jobs/2366617050111916/>

<sup>25</sup> See <https://www.facebook.com/careers/jobs/415061299214713/>

<sup>26</sup> See <https://www.facebook.com/careers/jobs/2425846344351399/>

<sup>27</sup> See <https://www.facebook.com/careers/jobs/2520284711370769/>

<sup>28</sup> See [https://h1bsalary.online/index.php?searchtext=FACEBOOK+INC&year=&minsalary=&state=Texas&worksite\\_city=austin&job\\_title=](https://h1bsalary.online/index.php?searchtext=FACEBOOK+INC&year=&minsalary=&state=Texas&worksite_city=austin&job_title=)

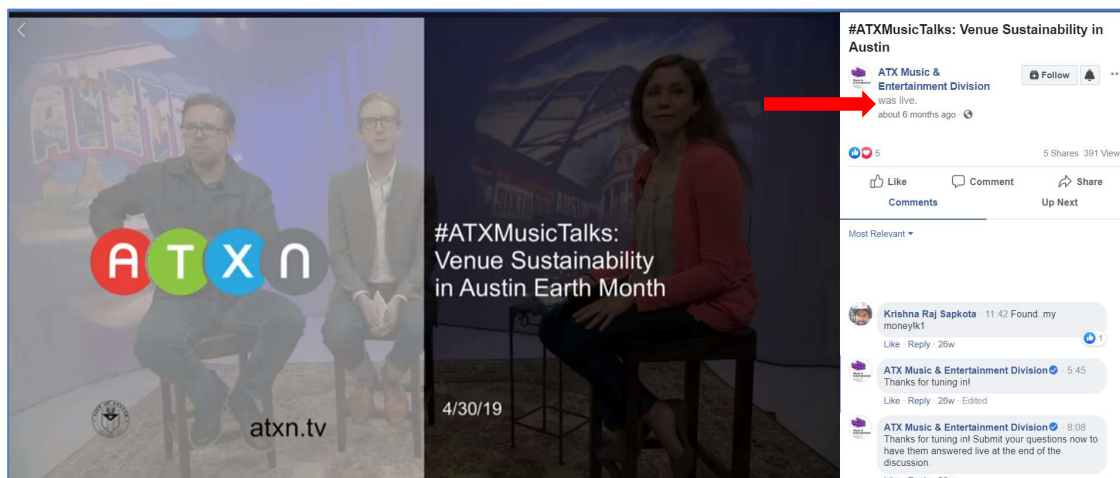
and practical application of a body of highly specialized knowledge . . . and attainment of a bachelor's or higher degree in the specific specialty. . . .” *See generally* 8 U.S.C. § 1184.

26. On information and belief, the accused products and services offered by Facebook including but not limited to Facebook Live, that Facebook uses, makes, markets, distributes, offers to sell, and sells to consumers throughout the United States and in this judicial district, infringe one or more of the claims of the patents-in-suit, were/are made by, were/are developed by, were/are marketed by, were/are supported by, or were/are serviced by employees located in the judicial district who work at one or more of Facebook's regular and established business locations in the judicial district, including without limitation, The Facebook Austin Office.

27. On information and belief, Facebook derives substantial revenue within the judicial district from the offer of infringing services, including but not limited to Facebook Live. On information and belief, thousands of Facebook users who reside in the judicial district regularly use the accused Facebook Live system and services while they are present in the judicial district.

28. On information and belief, the users of the infringing Facebook Live system who are located in the judicial district include, for example, the City of Austin, which hosted a “Facebook Live Panel Discussion” from the Austin City Hall, on or

about April 30, 2019.<sup>29</sup> On Information and belief, access to the “Facebook Live Panel Discussion” was, and as of the time of the filing of the instant lawsuit, still is available through Facebook’s website:



See

[https://www.facebook.com/ATXMusicOffice/videos/1095472340640848/?eid=ARDAQoKECwuepst4gtpVo1QA64hoXD8FJ\\_EKMPVH0l4n0ryTvZyq0lI2TeWN3iuyMHKRgAo84R\\_zNw3p](https://www.facebook.com/ATXMusicOffice/videos/1095472340640848/?eid=ARDAQoKECwuepst4gtpVo1QA64hoXD8FJ_EKMPVH0l4n0ryTvZyq0lI2TeWN3iuyMHKRgAo84R_zNw3p)

### **United States Patent No. 9,161,068**

29. On October 13, 2015, the United States Patent and Trademark Office (“USPTO”) duly and legally issued United States Patent No. 9,161,068 (“the ‘068 patent”) entitled “Remotely Accessed Virtual Recording Room” to inventor Gregory Duane Ellis. A true and correct copy of the ‘068 patent is attached as Exhibit 1.

30. The ‘068 patent is presumed valid under 35 U.S.C. § 282.

31. Onstream owns all rights, title, and interest in the ‘068 patent.

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<sup>29</sup> See <https://austintexas.gov/news/city-austin-host-facebook-live-panel-discussion-venue-sustainability>

32. Onstream has not granted Facebook a license to the rights under the '068 patent.

33. The '068 patent relates to, among other things, an audio and video stream recording, storage and delivery system.

34. The claimed invention(s) of the '068 patent sought to solve problems with, and improve upon, existing audio and video recording, storage, delivery systems. For example, the '068 patent states:

Unfortunately, new systems and methods for increasing the capabilities of online business-related communications and transactions often result in increased intellectual complexity and/or increased computer system requirements. This tendency is undesirable because another main avenue for increasing the productivity of online business-related communications and transactions is to increase the number of people who are participating in these online business-related transactions.

*See '068 Specification at col. 1, ll. 31-39.*

35. The '068 patent then states:

Accordingly, it would be highly valuable if any new systems and methods for increasing the capabilities of online business-related communications and transactions also could be simple enough to help attract new users to the online business market and also not have extensive computer system requirements.

*See '068 Specification at col. 1, ll. 39-44.*

36. The '068 patent then also states:

Accordingly, there has been a long existing need for a system that improves the level of communication possible with respect to online business-related transactions. Further, there is a continuing need for an improved system and/or method that is simple, efficient, and does not have extensive computer system requirements. Accordingly, those skilled in the art have long recognized the need for a system and method that addresses these and other issues.



See '068 Specification at col. 1, ll. 45-52.

37. The invention(s) claimed in the '068 patent solves various technological problems inherent in the then-existing audio and video recording, storage, and delivery systems and enables audio and video recording, storage, and delivery systems to, among other things, (1) function more efficiently, (2) lower the required level of expertise for users of such systems, (3) avoid the need to install and burden front end computer and electronic devices with additional software, (4) reduce or eliminate entirely the need for local memory storage devices and other specialized recording equipment, and (5) reduce or eliminate other hardware and software requirements inherent in prior art audio and video recording and distribution systems.

**United States Patent No. 9,467,728**

38. On October 11, 2016, the USPTO duly and legally issued United States Patent No. 9,467,728 ("the '728 patent") entitled "Remotely Accessed Virtual Recording Room" to inventor Gregory Ellis. A true and correct copy of the '728 patent is attached as Exhibit 2.

39. The '728 patent is presumed valid under 35 U.S.C. § 282.

40. Onstream owns all rights, title, and interest in the '728 patent.

41. Onstream has not granted Facebook a license to the rights under the '728 patent.

42. The '728 patent relates to, among other things, an audio and video stream recording, storage and delivery system.

43. The specification of the '728 patent is the same as the '068 patent specification, and addresses and solves the problems recited above and described in the '728 patent specification.

**United States Patent No. 10,038,930**

44. On July 31, 2018 the USPTO duly and legally issued United States Patent No. 10,038,930 ("the '930 patent") entitled "Remotely Accessed Virtual Recording Room" to inventor Gregory Duane Ellis. A true and correct copy of the '930 patent is attached as Exhibit 3.

45. The '930 patent is presumed valid under 35 U.S.C. § 282.

46. Onstream owns all rights, title, and interest in the '930 patent.

47. Onstream has not granted Facebook a license to the rights under the '930 patent.

48. The '930 patent relates to, among other things, an audio and video stream recording, storage and delivery system.

49. The claimed invention(s) of the '930 patent sought to solve problems with, and improve upon, existing audio and video recording, storage, delivery systems. The specification of the '930 patent is the same as the '068 patent specification, and addresses and solves the problems recited above and described in the '930 patent specification.

**United States Patent No. 10,200,648**

50. On February 5, 2019, the USPTO duly and legally issued United States Patent No. 10,200,648 ("the '648 patent") entitled "Remotely Accessed Virtual Recording

Room” to inventor Gregory Duane Ellis. A true and correct copy of the ’648 patent is attached as Exhibit 4.

51. The ’648 patent is presumed valid under 35 U.S.C. § 282.

52. Onstream owns all rights, title, and interest in the ’648 patent.

53. Onstream has not granted Facebook a license to the rights under the ’648 patent.

54. The ’648 patent relates to, among other things, an audio and video stream recording, storage and delivery system.

55. The claimed invention(s) of the ’648 patent sought to solve problems with, and improve upon, existing audio and video recording, storage, delivery systems. The specification of the ’648 patent is the same as the ’068 patent specification, and addresses and solves the problems recited above and described in the ’648 patent specification.

### **CLAIMS FOR RELIEF**

#### **Count I – Infringement of United States Patent No. 9,161,068**

56. Onstream repeats, realleges, and incorporates by reference, as if fully set forth here, the allegations of the preceding paragraphs above.

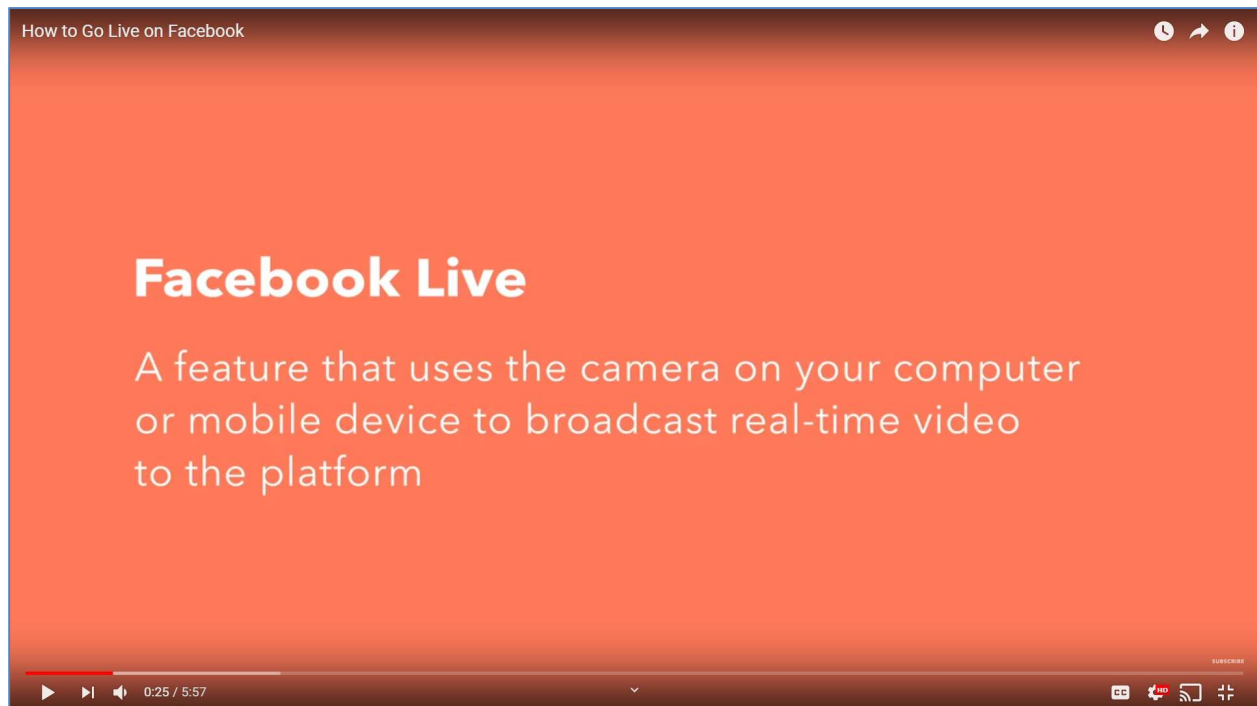
57. On information and belief, Facebook is the developer, owner, and operator of an online video streaming service called “Facebook Live.”<sup>30</sup>

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<sup>30</sup> See <https://www.facebook.com/facebookmedia/solutions/facebook-live> .

58. On information and belief, Facebook (or those acting on its behalf) makes, uses, and provides Facebook Live and sells and/or offers to sell products and services in the United States that use Facebook Live as a feature or component. Facebook Live, as well as the hardware and software components comprising the system that enables the Facebook Live service to operate, including but not limited to servers, server software, client software, and other computer systems and components (the “Facebook Live System”), infringes (literally and/or under the doctrine of equivalents) at least claim 1 of the ‘068 patent.

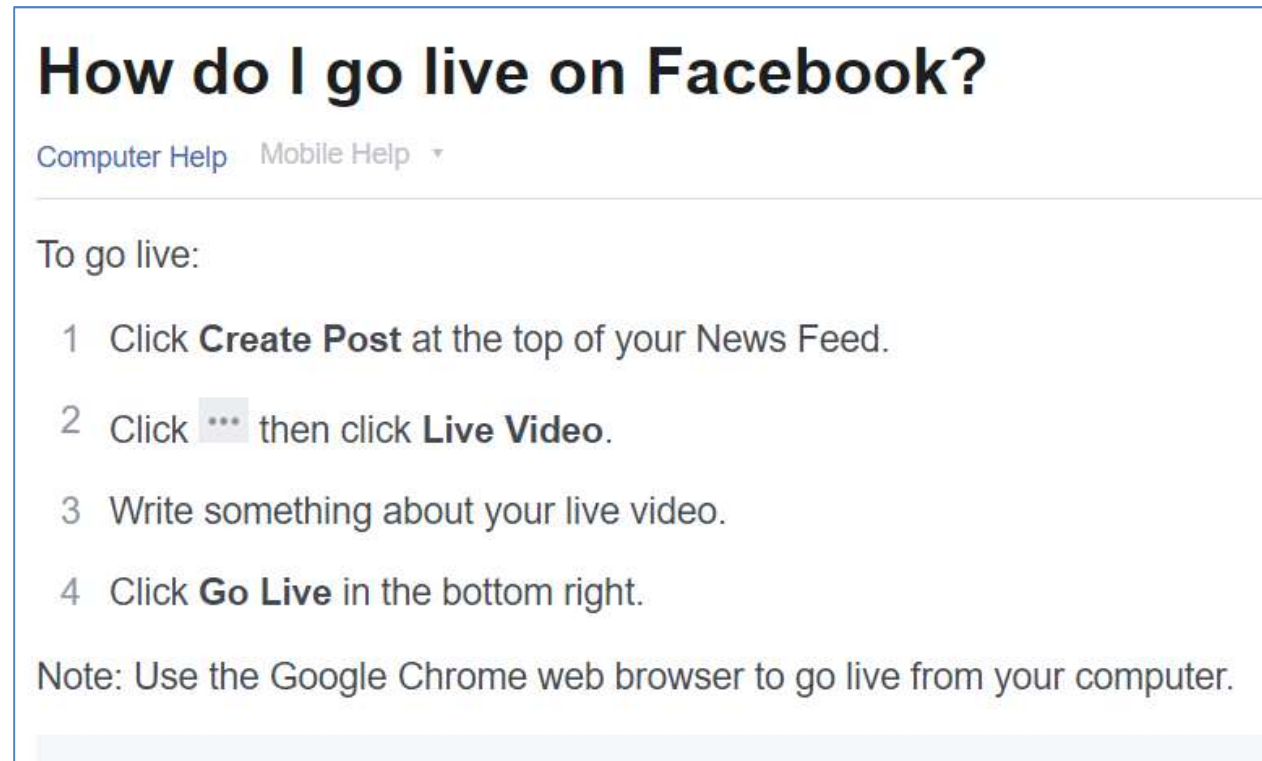
59. On information and belief, the Facebook Live System employs and provides a method that records audio and video material over an Internet browser connection established between a user front end and a host back end:



See <https://www.youtube.com/watch?v=fUUIzNJ2BA8&feature=youtu.be>. See also <https://blog.hubspot.com/marketing/facebook-live-guide>; <https://developers.facebook.com/docs/videos/live-video/getting-started#creating>.

60. On information and belief, the Facebook Live System, can either be accessed through a Facebook mobile device application<sup>31</sup> or using an Internet browser on a desktop computer.<sup>32</sup>

61. On information and belief, when a user wants to “go live” using the Facebook Live System, Facebook’s servers deliver a code, which can be executed by a browser, as demonstrated by the screenshot below:



<sup>31</sup> See e.g. <https://apps.apple.com/us/app/facebook/id284882215>.

<sup>32</sup> See [https://www.facebook.com/help/1636872026560015?helpref=faq\\_content](https://www.facebook.com/help/1636872026560015?helpref=faq_content). See also <https://youtu.be/seuXbX95fKc>; <http://www.krishna.me/how-to-use-facebook-live-from-desktop-without-third-party-tools/>.



See <https://www.facebook.com/help/1636872026560015?helpref=related>.

62. On information and belief, the Facebook Live System delivers a code that enables the streaming of audio and video material, as demonstrated by the example provided below:

Send a request to the `POST /me/live_videos?status=LIVE_NOW` endpoint. For example:

```
curl -i -X POST \
  "https://graph.facebook.com/v3.3/me/live_videos?status=LIVE_NOW&access_token={access-token}"
```

This will return a response that looks like this:

```
{
  "id": "10214937378883406", //The LiveVideo object ID
  "stream_url": "rtmp://rtmp-api.faceboo...",
  "secure_stream_url": "rtmps://rtmp-api.faceboo...", //The stream URL
  "stream_secondary_urls": [],
  "secure_stream_secondary_urls": []
}
```

See <https://developers.facebook.com/docs/live-video-api/getting-started>.

63. On information and belief, the Facebook Live System delivers a browser-executable-code that is a browser independent recording application that initiates the audio and video stream to be recorded.

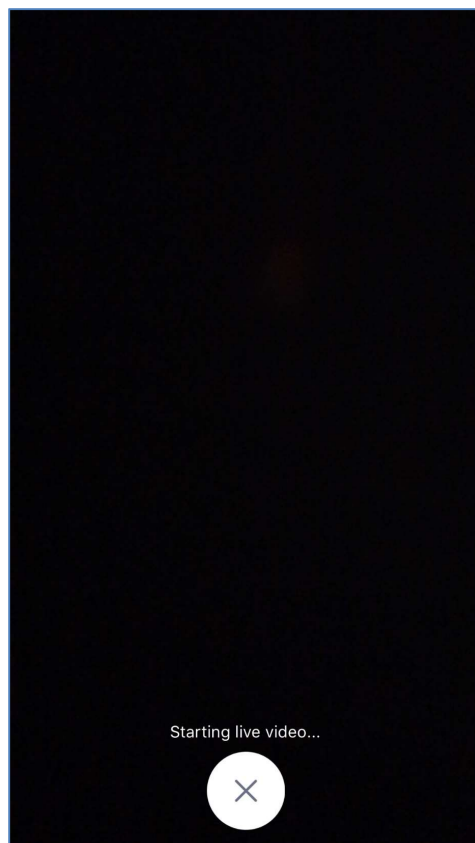
64. On information and belief, the Facebook Live System delivers a code that is browser independent, in part, because a user can record audio and video material without requiring specialized recording equipment, software, or coding as demonstrated by the example below:

The easiest way to get started is to to create a Facebook Live broadcast directly from your mobile device, since this does not require any special equipment, software, or coding—and you can broadcast anywhere you’ve got a strong internet connection.

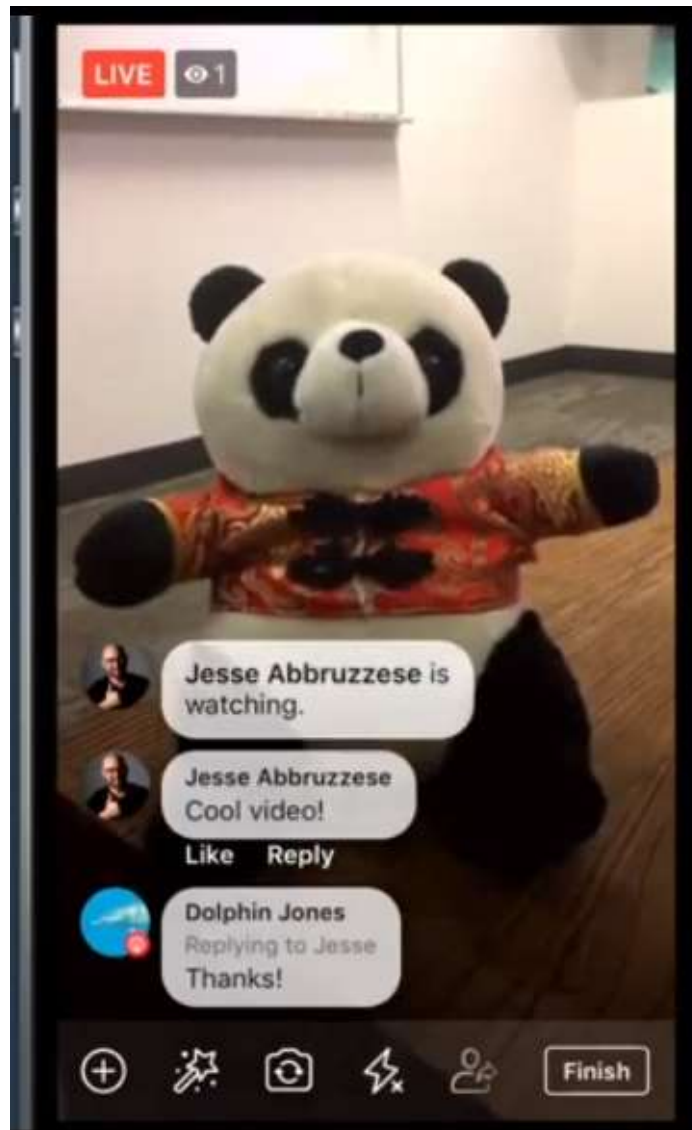
See e.g., <https://blog.hootsuite.com/facebook-live-video/>.

65. On information and belief, the Facebook Live System delivers a code that is executed though a browser at the user front end.

66. On information and belief, the Facebook Live System uses an Internet connection, as demonstrated by the black screen that is displayed when a user’s device is unable to access the internet:



67. The Facebook Live System employs and provides a method wherein audio and video material is streamed over the Internet as the audio and video material is captured by a recording device, as demonstrated by the screen capture below:

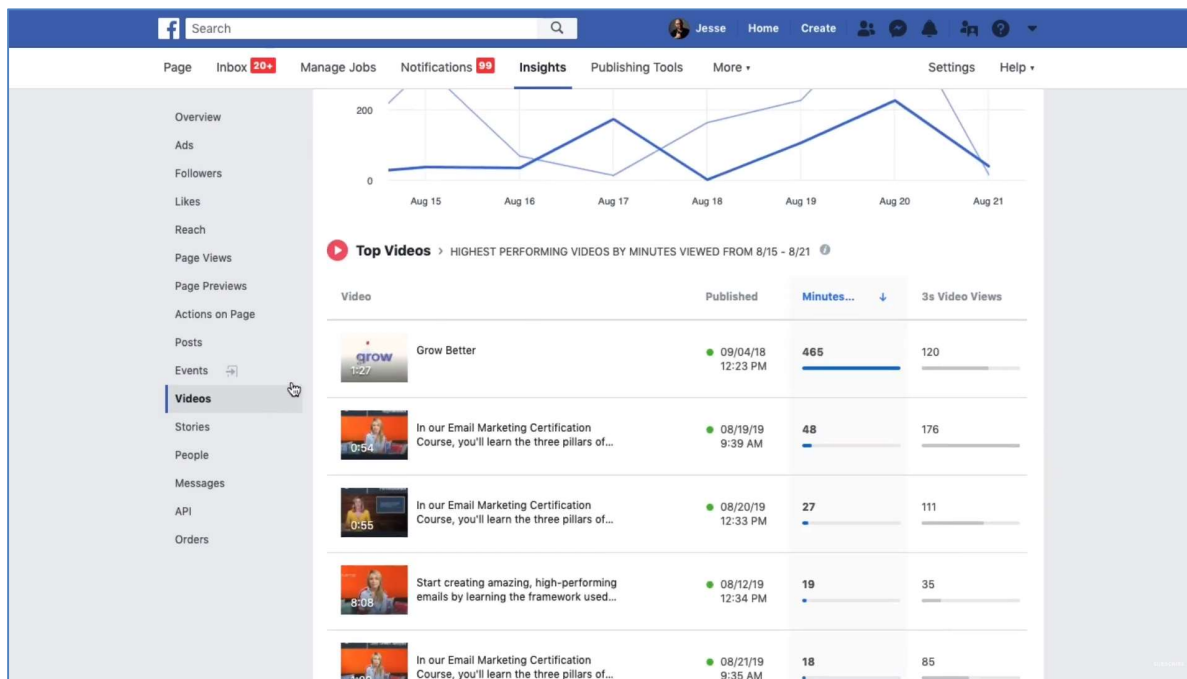


See <https://youtu.be/fUUIzNJ2BA8>.

68. On information and belief, the Facebook Live System uses and provides a method wherein audio and video material is captured without using any recording software installed on the user front end.<sup>33</sup>

69. On information and belief, the Facebook Live System uses and provides a method that does not require transmission of a complete audio and video file from the user front end. Rather, on information and belief, a stream of audio and video material is transmitted to Facebook's servers as the audio and video material is being captured.

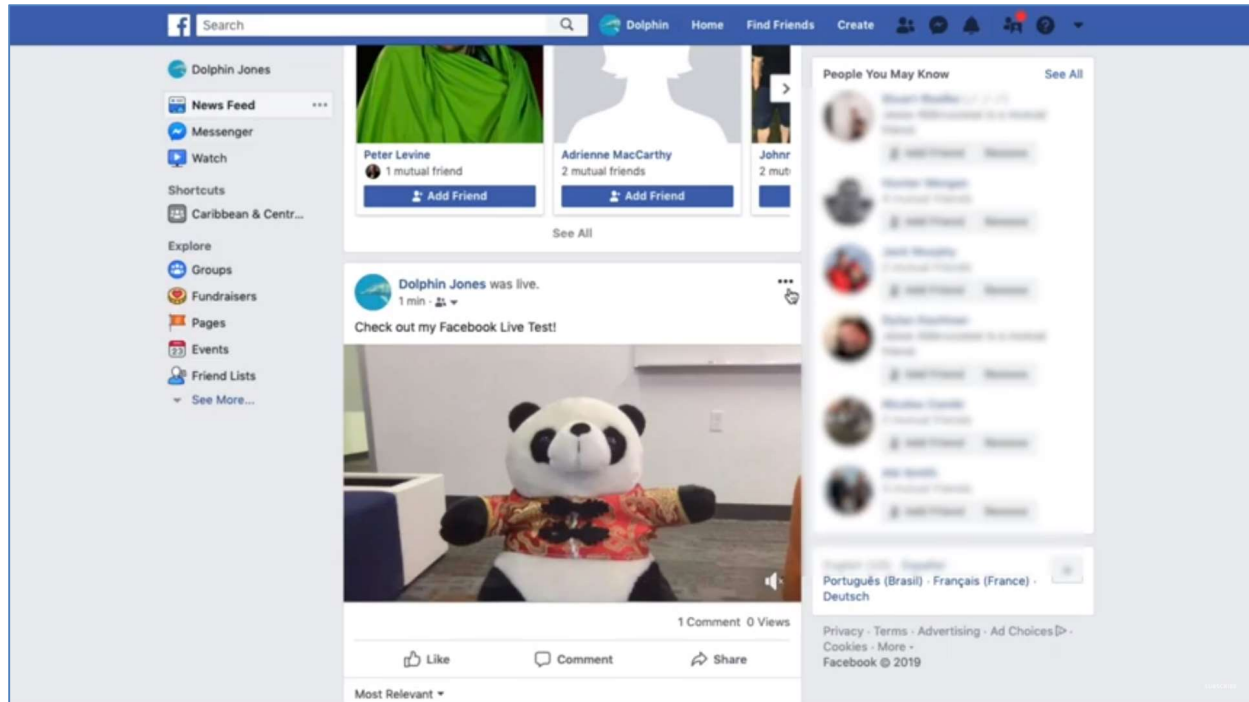
70. On information and belief, the Facebook Live System uses and provides a method wherein the audio and video recordings are made and stored on the host back end as a complete file as demonstrated by the screen capture below:



See <https://youtu.be/fUUIzNj2BA8>.

<sup>33</sup> See <https://blog.hubspot.com/marketing/facebook-live-guide>.

71. On information and belief, the Facebook Live System uses and provides a method wherein after the recording of audio and video material is complete, Facebook provides access to the entire audio and video recording through its website, which is hosted on Facebook's servers, as demonstrated by the screen capture below:



See <https://youtu.be/fUUIzNj2BA8>.

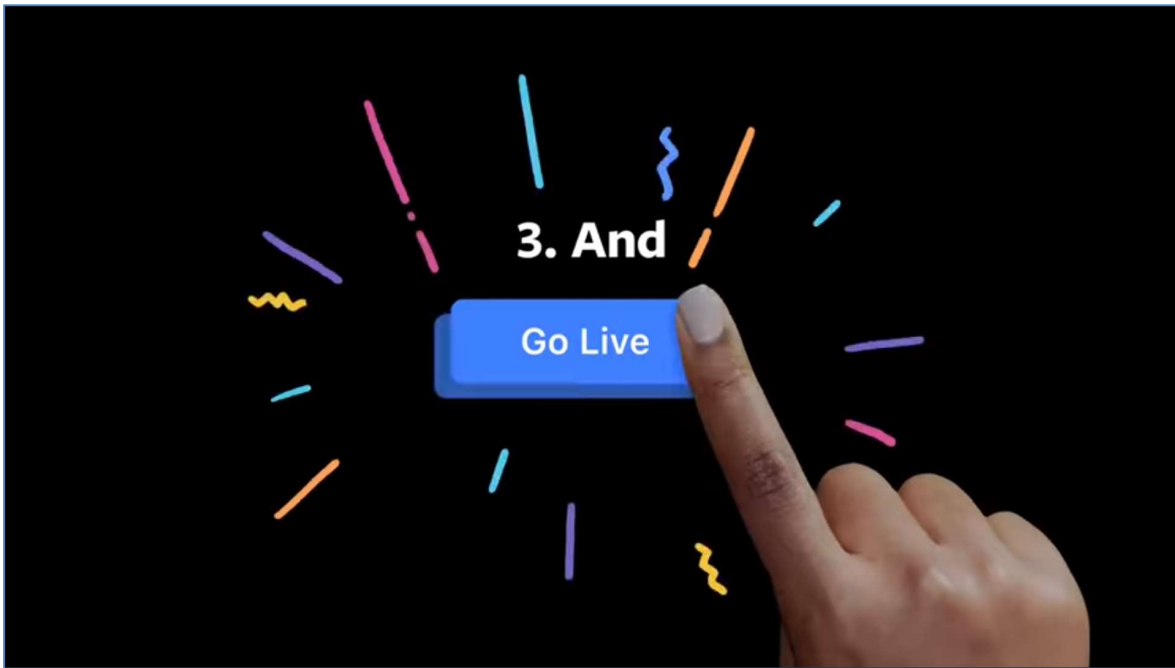
72. On information and belief, Facebook directly infringes at least claims 1, 18, 35, and 48 of the '068 patent, and is in violation of 35 U.S.C. § 271(a) by using and providing to others, the Facebook Live System.

73. On information and belief, Facebook has been on notice of the '068 patent at least as early as the filing and service of the Complaint in this action.

74. On information and belief, at least since its post-filing knowledge of the '068 patent, Facebook knowingly encourages, and continues to encourage, customers to



directly infringe one or more claims of the '068 patent, including by Facebook's actions that include, without limitation, instructing and encouraging customers to use the Facebook Live through user guides,<sup>34</sup> advertisements<sup>35</sup>, promotional materials and instructions.<sup>36</sup>



See <https://youtu.be/w9qzmK4jozA>.

75. On information and belief, at least since its post-filing knowledge of the '068 patent, Facebook knows that the acts Facebook induced customers to take constitute patent infringement and Facebook's encouraging acts result in direct infringement by customers.

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<sup>34</sup> See e.g. [https://www.facebook.com/help/1636872026560015?helpref=faq\\_content](https://www.facebook.com/help/1636872026560015?helpref=faq_content).

<sup>35</sup> See e.g. <https://youtu.be/w9qzmK4jozA>.

<sup>36</sup> See e.g. <https://www.facebook.com/facebookmedia/solutions/facebook-live>.

76. On information and belief, Facebook instructs and continues to instruct customers to use Facebook Live including, without limitation, through Facebook's websites, which provides access to, and support for, using the Facebook Live System.

77. On information and belief, Facebook's customers directly infringe at least claims 1, 18, 35, and 48 of the '068 patent through their use of the Facebook Live System.

78. On information and belief, Facebook is in violation of 35 U.S.C. § 271(b) and has been, at least since its post-filing knowledge of the '068 patent, indirectly infringing and continues to indirectly infringe at least claims 1, 18, 35, and 48 of the '068 patent by knowingly and specifically intending to induce infringement by others (including, without limitation, Facebook's users) and possessing specific intent to encourage infringement by Facebook's users. The components of the Facebook Live System are specifically configured to function in accordance with the '068 patent claims, are material parts of the invention.

79. Facebook's direct and/or indirect infringement has damaged Onstream and caused it to suffer and continue to suffer irreparable harm and damages as a result of Facebook's infringement.

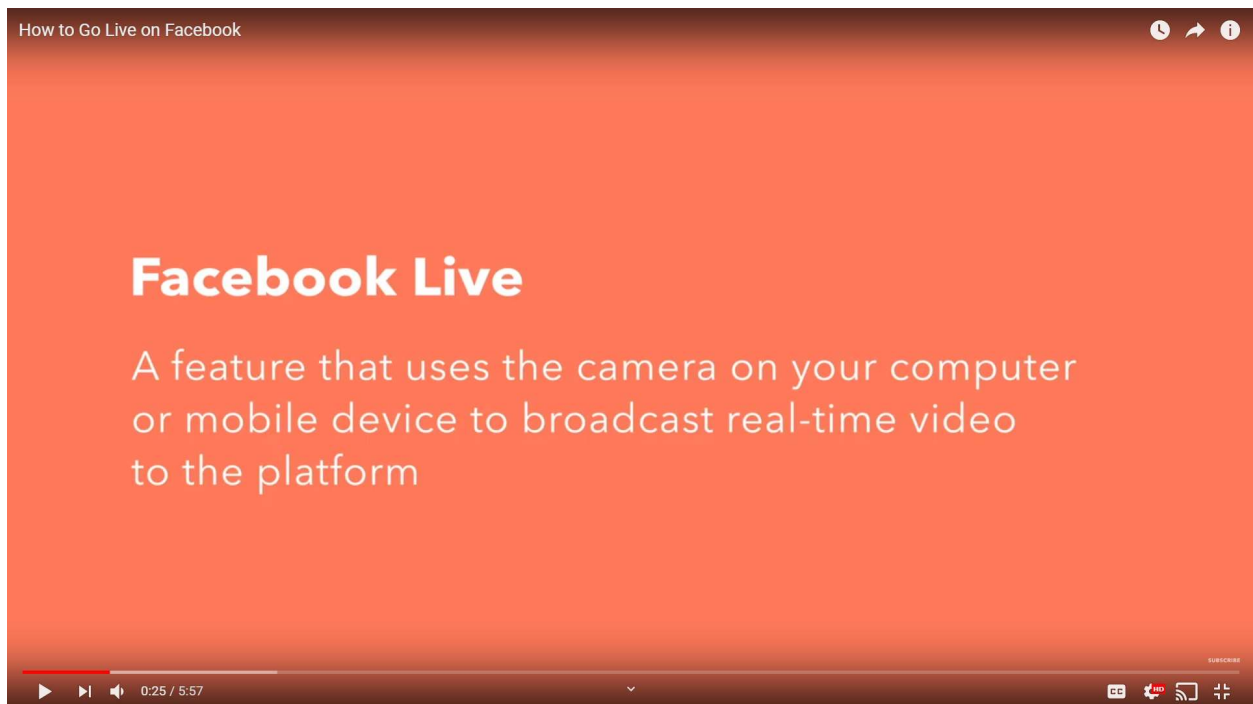
**Count II - Infringement of United States Patent No. 9,467,728**

80. Onstream repeats, realleges, and incorporates by reference, as if fully set forth here, the allegations of the preceding paragraphs above.

81. On information and belief, Facebook is the developer, owner, and operator of an online video streaming service called “Facebook Live.”<sup>37</sup>

82. On information and belief, Facebook (or those acting on its behalf) makes, uses, and provides Facebook Live and sells and/or offers to sell products and services in the United States that use Facebook Live as a feature or component. The Facebook Live System, infringes (literally and/or under the doctrine of equivalents) at least claim 1 of the '728 patent.

83. On information and belief, the Facebook Live System employs and provides an Internet-based method that records audio and video material over an Internet browser connection established between a user front end and a host back end:



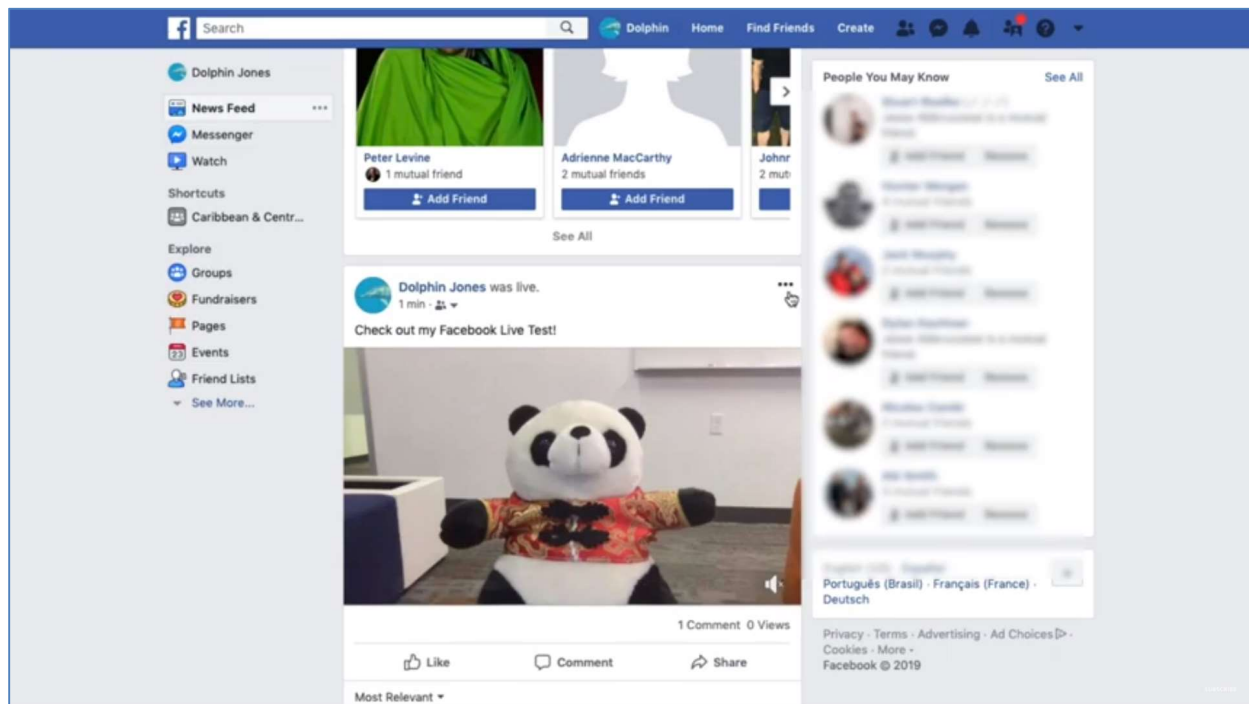
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<sup>37</sup> See <https://www.facebook.com/facebookmedia/solutions/facebook-live> .

See <https://www.youtube.com/watch?v=fUUIzNJ2BA8&feature=youtu.be> . See also <https://blog.hubspot.com/marketing/facebook-live-guide>; <https://developers.facebook.com/docs/videos/live-video/getting-started#creating> .

84. On information and belief, the Facebook Live System, including particularly and without limitation Facebook's servers, transmits via a network a platform-independent web application, which initiates the streaming of audio and video material from a user's device as the audio and video material is being captured by that device.

85. On information and belief, the Facebook Live System records audio and video material on Facebook's servers via the Facebook web application and stores that audio and video material as a complete file, as demonstrated by the screen capture below:



See <https://youtu.be/fUUIzNJ2BA8>.

86. On information and belief, the Facebook Live System generates one or more codes, including without limitation codes comprising a particular Live Video Object ID, including but not limited to Universal Resource Locator (URL) and Hyper Text Mark-Up Language (HTML) codes, which are associated with the recorded and stored audio and video, to facilitate accessing the recorded and stored audio and video material from an additional location, such as a location from which another user of the Facebook Live System is accessing the Facebook Live audio and video material.

87. On information and belief, the content of the one or more codes generated by the Facebook Live System depends on the type of code supported by the additional location. On information and belief, the content of the one or more codes generated by the Facebook Live System depends on, among other things, the data transfer protocols that are supported by the client and/or device from which another user of the Facebook Live System is accessing the Facebook Live audio and video material.

88. On information and belief, the Facebook Live System enables the copying and pasting of codes associated with the recorded and stored audio and video material, including without limitation codes comprising a particular Live Video Object ID, including but not limited to URL and HTML codes, to additional locations, wherein the activation of such a code provides access to the recorded audio and video from additional locations.

Clicking **Go Live** immediately begins the live post. Once live, you will see the red Live indicator appear on the video player.

Once your broadcast is finished, a recording of the video is posted to your Page. Click if you'd like an HTML code to embed the video into a website.



*See e.g.*

<https://www.facebook.com/help/publisher/167417030499767?id=383172118863825>.

89. On information and belief, Facebook directly infringes at least claims 1 and 21 of the '728 patent, and is in violation of 35 U.S.C. § 271(a) by using and providing to others, the Facebook Live System.

90. On information and belief, Facebook has been on notice of the '728 patent at least as early as the filing and service of the Complaint in this action.

91. On information and belief, at least since its post-filing knowledge of the '728 patent, Facebook knowingly encourages, and continues to encourage, customers to directly infringe one or more claims of the '728 patent, including by Facebook's actions that include, without limitation, instructing and encouraging customers to use the Facebook Live through user guides,<sup>38</sup> advertisements<sup>39</sup>, promotional materials and instructions.<sup>40</sup>

92. On information and belief, at least since its post-filing knowledge of the '728 patent, Facebook knows that the acts Facebook induced customers to take constitute patent infringement and Facebook's encouraging acts result in direct infringement by customers.

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<sup>38</sup> *See e.g.* [https://www.facebook.com/help/1636872026560015?helpref=faq\\_content](https://www.facebook.com/help/1636872026560015?helpref=faq_content).

<sup>39</sup> *See e.g.* <https://youtu.be/w9qzmK4jozA>.

<sup>40</sup> *See e.g.* <https://www.facebook.com/facebookmedia/solutions/facebook-live>.

93. On information and belief, Facebook instructs and continues to instruct customers to use the Facebook Live including, without limitation, through Facebook's website, which provides access to, and support for, using the Facebook Live System.

94. On information and belief, Facebook's customers directly infringe at least claims 1 and 21 of the '728 patent through their use of the Facebook Live System.

95. On information and belief, Facebook is in violation of 35 U.S.C. § 271(b) and has been, at least since its post-filing knowledge of the '728 patent, indirectly infringing and continues to indirectly infringe at least claims 1 and 21 of the '728 patent by knowingly and specifically intending to induce infringement by others (including, without limitation, Facebook's users) and possessing specific intent to encourage infringement by Facebook's users. The components of the Facebook Live System are specifically configured to function in accordance with the '728 patent claims, are material parts of the invention.

96. Facebook's direct and/or indirect infringement has damaged Onstream and caused it to suffer and continue to suffer irreparable harm and damages as a result of Facebook's infringement.

**Count III - Infringement of United States Patent No. 10,038,930**

97. Onstream repeats, realleges, and incorporates by reference, as if fully set forth here, the allegations of the preceding paragraphs above.

98. On information and belief, Facebook is the developer, owner, and operator of an online video streaming service called “Facebook Live.”<sup>41</sup>

99. On information and belief, Facebook (or those acting on its behalf) makes, uses, and provides Facebook Live and sells and/or offers to sell products and services in the United States that use Facebook Live as a feature or component. The Facebook Live System infringes (literally and/or under the doctrine of equivalents) at least claim 1 of the ‘930 patent.

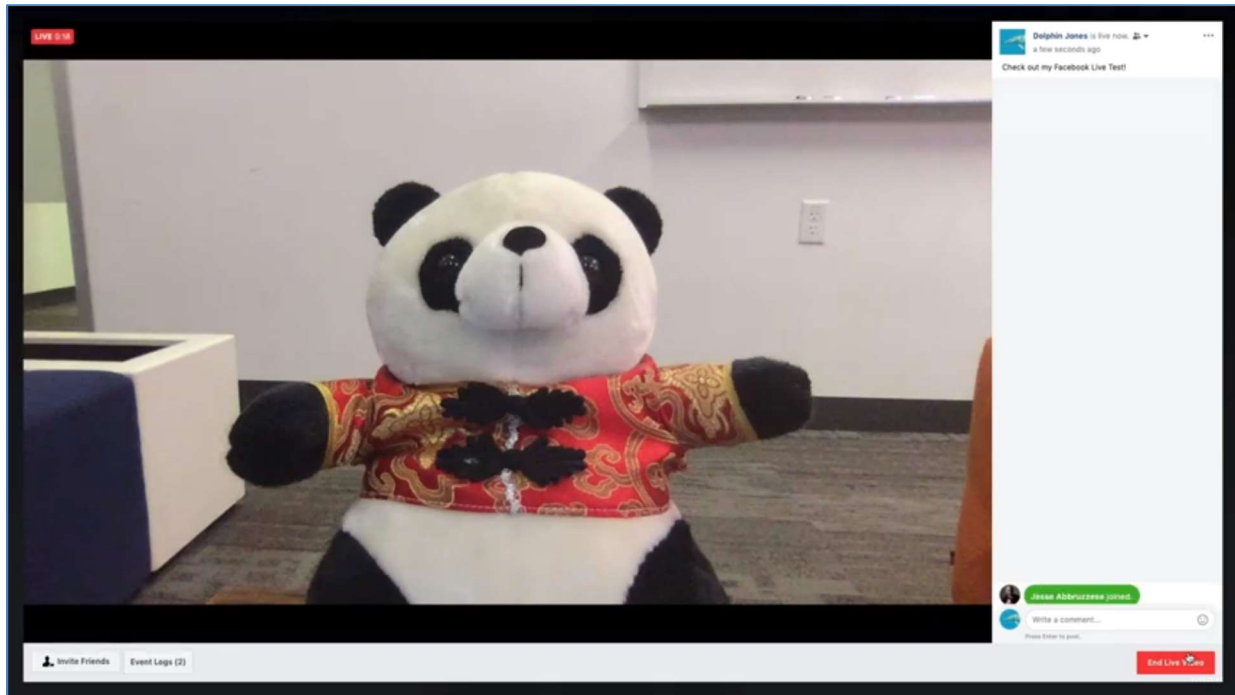
100. On information and belief, the Facebook Live System employs a method that transmits via a network a browser-independent recording application from Facebook’s servers to the devices used by Facebook’s users.

101. On information and belief, Facebook’s servers receive a media stream from the devices used by Facebook’s users.

102. On information and belief, the media streams that are transmitted to Facebook’s servers are captured by the Facebook browser-independent recording applications, which execute in a browser, as demonstrated by the screen capture below:

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<sup>41</sup> See <https://www.facebook.com/facebookmedia/solutions/facebook-live> .



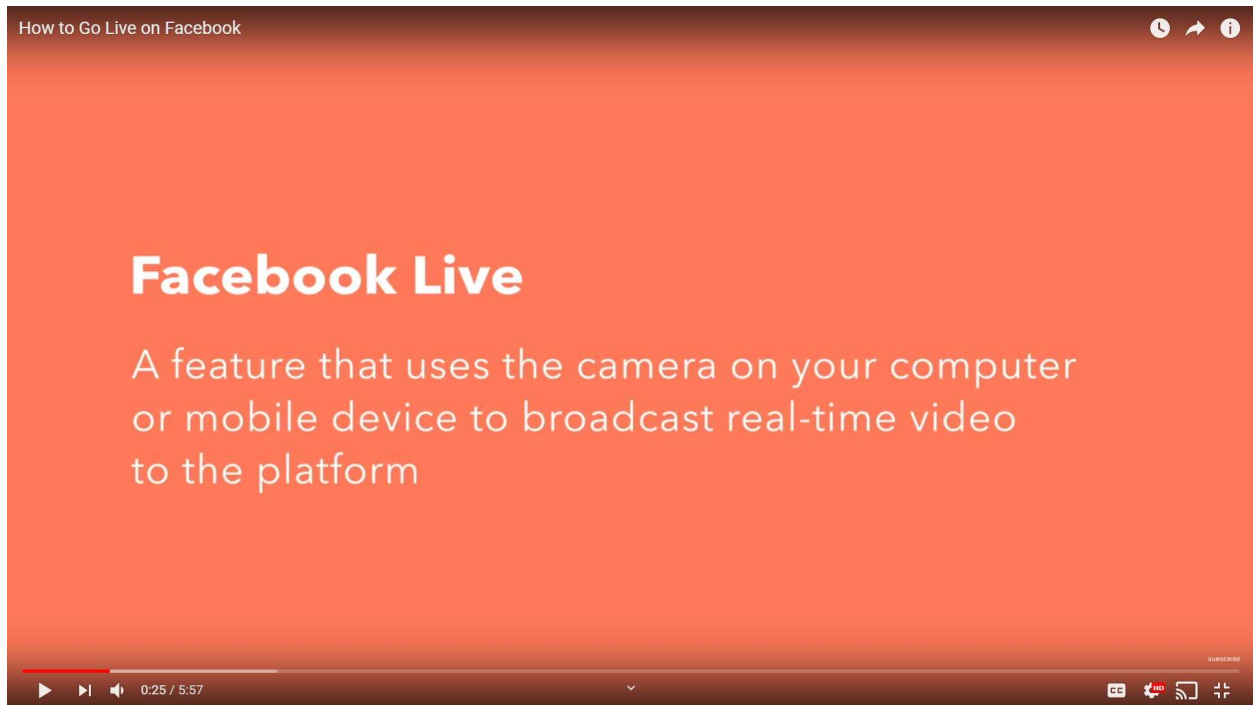
See <https://youtu.be/fUUIzNJ2BA8>.

103. On information and belief, the Facebook Live System does not require the installation of record management software to be installed on the devices used by their users to access the Facebook Live System:

The easiest way to get started is to to create a Facebook Live broadcast directly from your mobile device, since this does not require any special equipment, software, or coding—and you can broadcast anywhere you’ve got a strong internet connection.

See e.g., <https://blog.hootsuite.com/facebook-live-video/>.

104. On information and belief, the media streams generated by the users of the Facebook Live System are recorded on Facebook’s servers using the Facebook client, which is a browser-independent recording application:



See <https://www.youtube.com/watch?v=fUUIzNJ2BA8&feature=youtu.be> . See also <https://blog.hubspot.com/marketing/facebook-live-guide>; <https://developers.facebook.com/docs/videos/live-video/getting-started#creating> .

105. On information and belief, Facebook directly infringes at least claims 1 and 11 of the '930 patent, and is in violation of 35 U.S.C. § 271(a) by using and providing to others, the Facebook Live System.

106. On information and belief, Facebook has been on notice of the '930 patent at least as early as the filing and service of the Complaint in this action.

107. On information and belief, at least since its post-filing knowledge of the '930 patent, Facebook knowingly encourages, and continues to encourage, customers to directly infringe one or more claims of the '930 patent, including by Facebook's actions that include, without limitation, instructing and encouraging customers to use the

Facebook Live through user guides,<sup>42</sup> advertisements<sup>43</sup>, promotional materials and instructions.<sup>44</sup>

108. On information and belief, at least since its post-filing knowledge of the '930 patent, Facebook knows that the acts Facebook induced customers to take constitute patent infringement and Facebook's encouraging acts result in direct infringement by customers.

109. On information and belief, Facebook instructs and continues to instruct customers to use the Facebook Live including, without limitation, through Facebook's website, which provides access to, and support for, using the Facebook Live System.

110. On information and belief, Facebook's customers directly infringe at least claims 1 and 11 of the '930 patent through their use of the Facebook Live System.

111. On information and belief, Facebook is in violation of 35 U.S.C. § 271(b) and has been, at least since its post-filing knowledge of the '930 patent, indirectly infringing and continues to indirectly infringe at least claims 1 and 11 of the '930 patent by knowingly and specifically intending to induce infringement by others (including, without limitation, Facebook's users) and possessing specific intent to encourage infringement by Facebook's users. The components of the Facebook Live System are

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<sup>42</sup> See e.g. [https://www.facebook.com/help/1636872026560015?helpref=faq\\_content](https://www.facebook.com/help/1636872026560015?helpref=faq_content).

<sup>43</sup> See e.g. <https://youtu.be/w9qzmK4jozA>.

<sup>44</sup> See e.g. <https://www.facebook.com/facebookmedia/solutions/facebook-live>.

specifically configured to function in accordance with the '930 patent claims, are material parts of the invention.

112. Facebook's direct and/or indirect infringement has damaged Onstream and caused it to suffer and continue to suffer irreparable harm and damages as a result of Facebook's infringement.

**Count IV – Infringement of United States Patent No. 10,200,648**

113. Onstream repeats, realleges, and incorporates by reference, as if fully set forth here, the allegations of the preceding paragraphs above.

114. On information and belief, Facebook is the developer, owner, and operator of an online video streaming service called "Facebook Live."<sup>45</sup>

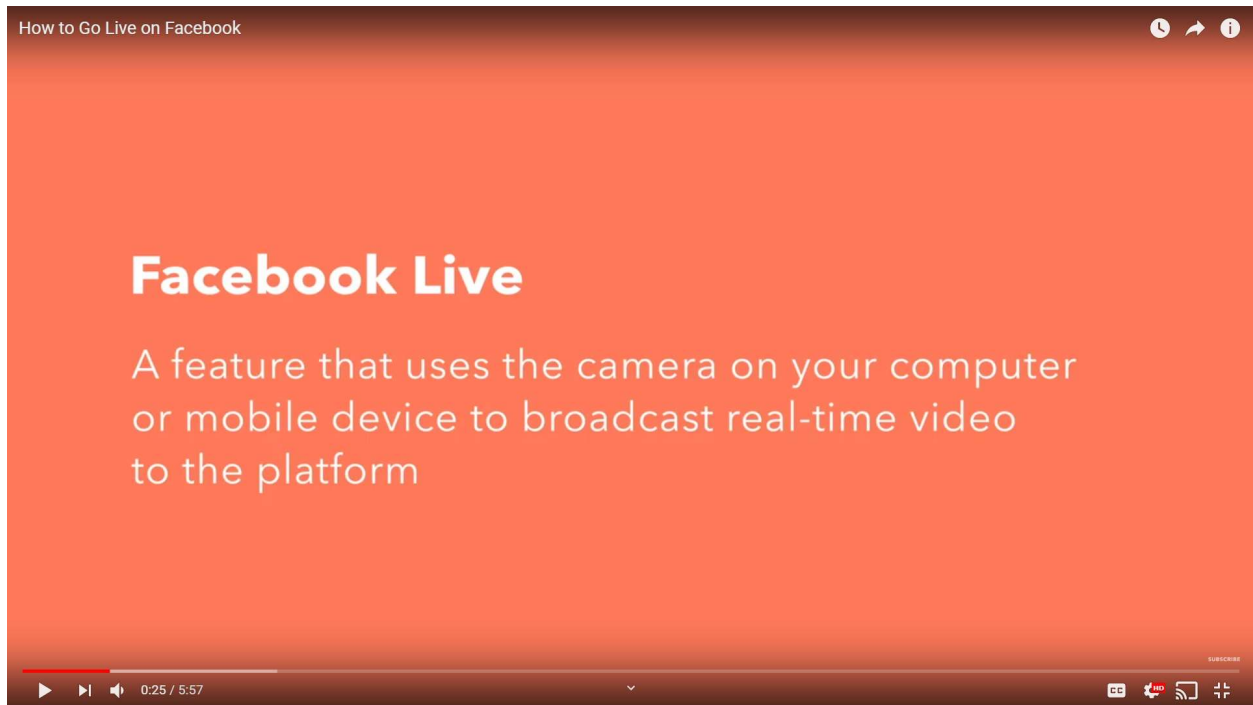
115. On information and belief, Facebook (or those acting on its behalf) makes, uses, and provides Facebook Live and sells and/or offers to sell products and services in the United States that use Facebook Live as a feature or component. The Facebook Live System, infringes (literally and/or under the doctrine of equivalents) at least claim 1 of the '648 patent.

116. On information and belief, the Facebook Live System employs an Internet-based recording method that performs all of its audio and video recording functions over an Internet browser connection established between a user front end and a host back end:

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<sup>45</sup> See <https://www.facebook.com/facebookmedia/solutions/facebook-live> .





See <https://www.youtube.com/watch?v=fUUIzNJ2BA8&feature=youtu.be> . See also <https://blog.hubspot.com/marketing/facebook-live-guide>; <https://developers.facebook.com/docs/videos/live-video/getting-started#creating> .

117. On information and belief, the Facebook Live System records audio and video material that is created by a user over an internet browser connection, without requiring recording functionality to be present in the user's device.

118. On information and belief, the Facebook Live System stores audio and video material on Facebook's servers.

119. On information and belief, the Facebook Live System generates one or more codes, including without limitation codes comprising a particular Live Video Object ID, including but not limited to URL and HTML codes, associated with the recorded and stored audio and video, to facilitate accessing the recorded and stored audio and video material.

120. On information and belief, the Facebook Live System enables the copying and pasting of code, including without limitation codes comprising a particular Live Video Object ID, including but not limited to URL and HTML codes, to additional locations, wherein the activation of such a code provides access to the recorded audio and video from additional locations.

Clicking **Go Live** immediately begins the live post. Once live, you will see the red Live indicator appear on the video player.

Once your broadcast is finished, a recording of the video is posted to your Page. Click if you'd like an HTML code to embed the video into a website.

See e.g.

<https://www.facebook.com/help/publisher/167417030499767?id=383172118863825>.

121. On information and belief, Facebook directly infringes at least claims 1 and 18 of the '648 patent, and is in violation of 35 U.S.C. § 271(a) by using and providing to others, the Facebook Live System.

122. On information and belief, Facebook has been on notice of the '648 patent at least as early as the filing and service of the Complaint in this action.

123. On information and belief, at least since its post-filing knowledge of the '648 patent, Facebook knowingly encourages, and continues to encourage, customers to directly infringe one or more claims of the '648 patent, including by Facebook's actions that include, without limitation, instructing and encouraging customers to use the

Facebook Live through user guides,<sup>46</sup> advertisements<sup>47</sup>, promotional materials and instructions.<sup>48</sup>

124. On information and belief, at least since its post-filing knowledge of the '648 patent, Facebook knows that the acts Facebook induced customers to take constitute patent infringement and Facebook's encouraging acts result in direct infringement by customers.

125. On information and belief, Facebook instructs and continues to instruct customers to use the Facebook Live including, without limitation, through Facebook's website, which provides access to, and support for, using the Facebook Live System.

126. On information and belief, Facebook's customers directly infringe at least claims 1 and 18 of the '648 patent through their use of the Facebook Live System.

127. On information and belief, Facebook is in violation of 35 U.S.C. § 271(b) and has been, at least since its post-filing knowledge of the '648 patent, indirectly infringing and continues to indirectly infringe at least claims 1 and 18 of the '648 patent by knowingly and specifically intending to induce infringement by others (including, without limitation, Facebook's users) and possessing specific intent to encourage infringement by Facebook's users. The components of the Facebook Live System are

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<sup>46</sup> See e.g. [https://www.facebook.com/help/1636872026560015?helpref=faq\\_content](https://www.facebook.com/help/1636872026560015?helpref=faq_content).

<sup>47</sup> See e.g. <https://youtu.be/w9qzmK4jozA>.

<sup>48</sup> See e.g. <https://www.facebook.com/facebookmedia/solutions/facebook-live>.

specifically configured to function in accordance with the '648 patent claims, are material parts of the invention.

128. Facebook's direct and/or indirect infringement has damaged Onstream and caused it to suffer and continue to suffer irreparable harm and damages as a result of Facebook's infringement.

**JURY DEMANDED**

129. Pursuant to Federal Rule of Civil Procedure 38(b), Onstream hereby requests a trial by jury on all issues so triable.

**PRAYER FOR RELIEF**

Onstream respectfully requests this Court to enter judgment in Onstream's favor and against Facebook as follows:

- a. finding that Facebook has infringed one or more claims of the '068 patent under 35 U.S.C. §§ 271(a) and/or (b);
- b. finding that Facebook has infringed one or more claims of the '728 patent under 35 U.S.C. §§ 271(a) and/or (b);
- c. finding that Facebook has infringed one or more claims of the '930 patent under 35 U.S.C. §§ 271(a) and/or (b);
- d. finding that Facebook has infringed one or more claims of the '648 patent under 35 U.S.C. §§ 271(a) and/or (b);
- e. awarding Onstream damages under 35 U.S.C. § 284, or otherwise permitted by law, including supplemental damages for any continued post-verdict infringement;

- f. awarding Onstream pre-judgment and post-judgment interest on the damages award and costs;
- g. awarding cost of this action (including all disbursements) and attorney fees pursuant to 35 U.S.C. § 285, or as otherwise permitted by the law; and
- h. awarding such other costs and further relief that the Court determines to be just and equitable.

Dated: December 13, 2019

Respectfully submitted,

/s/Raymond W. Mort, III  
Raymond W. Mort, III  
Texas State Bar No. 00791308  
[raymort@austinlaw.com](mailto:raymort@austinlaw.com)

THE MORT LAW FIRM, PLLC  
100 Congress Avenue, Suite 2000  
Austin, Texas 78701  
Tel/Fax: 512-865-7950

*Of Counsel:*  
Ronald M. Daignault (*pro hac vice* to be filed)  
Chandran B. Iyer (*pro hac vice* to be filed)  
Oded Burger (*pro hac vice* to be filed)  
[rdaignault@goldbergsegalla.com](mailto:rdaignault@goldbergsegalla.com)  
[ciyer@goldbergsegalla.com](mailto:ciyer@goldbergsegalla.com)  
[oburger@goldbergsegalla.com](mailto:oburger@goldbergsegalla.com)  
GOLDBERG SEGALLA LLP  
711 Third Avenue, Suite 1900  
New York, New York 10017  
Telephone: (646) 292-8700

Attorneys for Onstream Media Corporation