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TUMBLEWEED COMMUNICATIONS CORP.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

TUMBLEWEED COMMUNICATIONS CORP.,

Plaintiff,

vs.

PAYPAL, INC. and EBAY INC.,

Defendants.

AND RELATED CROSS-ACTIONS

CASE NO. C 02-02212 CW

**SECOND AMENDED  
COMPLAINT AND JURY  
DEMAND**

1 Plaintiff, Tumbleweed Communications Corp. (“Tumbleweed”), for its Second  
2 Amended Complaint against defendants PayPal, Inc. (“PayPal”) and eBay Inc. (“eBay”), alleges  
3 upon personal knowledge with respect to itself and its own acts, and upon information and belief  
4 with respect to all other matters, as follows:

5 **THE PARTIES**

6 1. Tumbleweed is a Delaware corporation with its principal place of business  
7 in Redwood City, California. Tumbleweed is a worldwide leader in the development,  
8 manufacture, and marketing of, among other things, online electronic document and file delivery  
9 products and services.

10 2. PayPal is a Delaware corporation with its principal place of business in  
11 Mountain View, California. PayPal offers, among other things, online payment products.

12 3. eBay is a Delaware corporation with its principal place of business in San  
13 Jose, California. eBay offers, among other things, online payment products and an online trading  
14 platform that supports an auction format wherein sellers list items for sale and buyers bid on  
15 items of interest. In connection with its online trading platform, eBay employs its own online  
16 payment products and induces customers to use those products and/or those of defendant PayPal.

17 **JURISDICTION AND VENUE**

18 4. This Court has subject matter jurisdiction over this action pursuant to 28  
19 U.S.C. §§1331 and § 1338, in that this is a civil action for patent infringement arising under the  
20 Patent Laws of the United States, Title 35, United States Code. This Court has personal  
21 jurisdiction over defendants because defendants’ headquarters and principal places of business are  
22 in this district, defendants regularly do business in this district, and/or defendants have committed  
23 acts of patent infringement in this district.

24 5. Venue is proper in this district under 28 U.S.C. §§1391(b) and (c) and  
25 1400(b) because defendants are subject to personal jurisdiction in this district, defendants reside  
26 and/or may be found in this district, and/or defendants have committed acts of patent  
27 infringement and regularly do business in this district.  
28

**INTRADISTRICT ASSIGNMENT**

6. Pursuant to Civil Local Rules 3-5(b) and 3-2(c) & (d), this action arises in the San Francisco Division of this Court in that the acts complained of herein include substantial acts of patent infringement committed by defendants in the Counties of San Francisco and San Mateo, State of California.

**FIRST CAUSE OF ACTION**

Patent Infringement – United States Patent No. 6,192,407

(Against defendant PayPal)

7. Tumbleweed hereby refers to and incorporates each and every allegation set forth in paragraphs 1 through 6 of this Second Amended Complaint as though fully set forth herein.

8. Tumbleweed is the sole and exclusive owner of United States Patent No. 6,192,407 (the “’407 patent”), entitled “Private, Trackable URLs For Directed Document Delivery.” The ’407 patent was duly and legally issued by the United States Patent and Trademark Office on February 20, 2001. A copy of the ’407 patent is attached hereto as Exhibit A.

9. In violation of 35 U.S.C. § 271(a), PayPal has made, used, offered for sale and/or sold in the United States a system that infringes one or more claims of the ’407 patent.

10. PayPal also has actively induced the infringement of, and/or contributed to the infringement of, one or more claims of the ’407 patent in violation of 35 U.S.C. §§ 271(b) & (c).

11. PayPal has known of, and has had possession of, the ’407 patent at least since January 18, 2002.

12. The infringement of the ’407 patent by PayPal has been willful and wanton.

13. Tumbleweed has suffered and will continue to suffer serious irreparable injury unless PayPal’s infringement of the ’407 is enjoined.

**SECOND CAUSE OF ACTION**

Patent Infringement – United States Patent No. 6,192,407

(Against defendant eBay)

14. Tumbleweed hereby refers to and incorporates each and every allegation set forth in paragraphs 1 through 9 of this Second Amended Complaint as though fully set forth herein.

15. In violation of 35 U.S.C. § 271(a), eBay has made, used, offered for sale and/or sold in the United States a system that infringes one or more claims of the '407 patent.

16. eBay also has actively induced the infringement of, and/or contributed to the infringement of, one or more claims of the '407 patent in violation of 35 U.S.C. §§ 271(b) & (c).

17. eBay has known of, and has had possession of, the '407 patent at least since at least March 6, 2002.

18. The infringement of the '407 patent by eBay has been willful and wanton.

19. Tumbleweed has suffered and will continue to suffer serious irreparable injury unless eBay's infringement of the '407 patent is enjoined.

**THIRD CAUSE OF ACTION**

Patent Infringement – United States Patent No. 5,790,790

(Against defendant PayPal)

20. Tumbleweed hereby refers to and incorporates each and every allegation set forth in paragraphs 1 through 6 of this Second Amended Complaint as though fully set forth herein.

21. Tumbleweed is the sole and exclusive owner of the United States Patent No. 5,790,790 (the "'790 patent"), entitled "Electronic Document Delivery System In Which Notification Of Said Electronic Document Is Sent To A Recipient Thereof." The '790 patent was duly and legally issued by the United States Patent and Trademark Office on August 4, 1998. A copy of the '790 patent is attached hereto as Exhibit B.

22. In violation of 35 U.S.C. § 271(a), PayPal has made, used, offered for sale and/or sold in the United States an apparatus that infringes one or more claims of the '790 patent.

23. PayPal also has actively induced the infringement of, and/or contributed to the infringement of, one or more claims of the '790 patent in violation of 35 U.S.C. §§ 271(b) & (c).

24. PayPal has known of, and has had possession of, the '790 patent at least since January 18, 2002.

25. The infringement of the '790 patent by PayPal has been willful and wanton.

26. Tumbleweed has suffered and will continue to suffer serious irreparable injury unless PayPal's infringement of the '790 patent is enjoined.

#### **FOURTH CAUSE OF ACTION**

Patent Infringement – United States Patent No. 5,790,790

(Against defendant eBay)

27. Tumbleweed hereby refers to and incorporates each and every allegation set forth in paragraphs 1 through 6 and 20 through 22 of this Second Amended Complaint as though fully set forth herein.

28. In violation of 35 U.S.C. § 271(a), eBay has made, used, offered for sale and/or sold in the United States an apparatus that infringes one or more claims of the '790 patent.

29. eBay also has actively induced the infringement of, and/or contributed to the infringement of, one or more claims of the '790 patent in violation of 35 U.S.C. §§ 271(b) & (c).

30. eBay has known of, and has had possession of, the '790 patent at least since March 6, 2002.

31. The infringement of the '790 patent by eBay has been willful and wanton.

32. Tumbleweed has suffered and will continue to suffer serious irreparable injury unless eBay's infringement of the '790 patent is enjoined.

**FIFTH CAUSE OF ACTION**

Patent Infringement – United States Patent No. 6,487,599

(Against defendant PayPal)

33. Tumbleweed hereby refers to and incorporates each and every allegation set forth in paragraphs 1 through 6 of this Second Amended Complaint as though fully set forth herein.

34. Tumbleweed is the sole and exclusive owner of the United States Patent No. 6,487,599 (the “’599 patent”), entitled “Electronic Document Delivery System In Which Notification Of Said Electronic Document Is Sent A Recipient Thereof.” The ’599 patent was duly and legally issued by the United States Patent and Trademark Office on November 26, 2002. A copy of the ’599 patent is attached hereto as Exhibit C.

35. In violation of 35 U.S.C. § 271(a), PayPal has made, used, offered for sale and/or sold in the United States a system that infringes one or more claims of the ’599 patent.

36. PayPal also has actively induced the infringement of, and/or contributed to the infringement of, one or more claims of the ’599 patent in violation of 35 U.S.C. §§ 271(b) & (c).

37. PayPal has known of, and has had possession of, the ’599 patent at least since November 27, 2002. The filing of this Second Amended Complaint constitutes further notice to PayPal in accordance with 35 U.S.C. § 287.

38. The infringement of the ’599 patent by PayPal has been willful and wanton.

39. Tumbleweed has suffered and will continue to suffer serious irreparable injury unless PayPal’s infringement of the ’599 patent is enjoined.

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**SIXTH CAUSE OF ACTION**

Patent Infringement – United States Patent No. 6,487,599

(Against defendant eBay)

40. Tumbleweed hereby refers to and incorporates each and every allegation set forth in paragraphs 1 through 6 and 27 through 29 of this Second Amended Complaint as though fully set forth herein.

41. In violation of 35 U.S.C. § 271(a), eBay has made, used, offered for sale and/or sold in the United States a system that infringes one or more claims of the '599 patent.

42. eBay also has actively induced the infringement of, and/or contributed to the infringement of, one or more claims of the '599 patent in violation of 35 U.S.C. §§ 271(b) & (c).

43. eBay has known of, and has had possession of, the '599 patent at least since November 27, 2002. The filing of this Second Amended Complaint constitutes further notice to eBay in accordance with 35 U.S.C. § 287.

44. The infringement of the '599 patent by eBay has been willful and wanton. Tumbleweed has suffered and will continue to suffer serious irreparable injury unless eBay's infringement of the '599 patent is enjoined.

Wherefore, Tumbleweed respectfully requests that this Court enter judgment in its favor and against defendants and grant the following relief:

A. A judgment that defendants have infringed the '407, '790 and '599 patents in violation of 35 U.S.C. §§ 271(a), (b) and (c);

B. A judgment that defendants' infringement of the '407, '790 and '599 patents has been willful and wanton;

C. A preliminary and permanent injunction, pursuant to 35 U.S.C. § 283, enjoining defendants, and all persons in active concert or participation with them, from any further acts of infringement, inducement of infringement, or contributory infringement of the '407, '790 and '599 patents;

D. An order, pursuant to 35 U.S.C. § 284, awarding Tumbleweed damages

adequate to compensate Tumbleweed for defendants' infringement of the '407, '790 and '599 patents, in an amount to be determined at trial, but in no event less than a reasonable royalty;

E. An order, pursuant to 35 U.S.C. § 284, and based on defendants' willful and wanton infringements of the '407, '790 and '599 patents, trebling all damages awarded to Tumbleweed;

F. An order, pursuant to 35 U.S.C. § 284, awarding to Tumbleweed interest on the damages and its costs incurred in this action;

G. An order, pursuant to 35 U.S.C. § 285, finding that this is an exceptional case and awarding to Tumbleweed its reasonable attorneys' fees incurred in this action; and

H. Such other and further relief as this Court may deem just and proper.

DATED: January 10, 2003

MUNGER, TOLLES & OLSON LLP

By:                     /s/                      
GREGORY P. STONE

Attorneys for Plaintiff  
TUMBLEWEED COMMUNICATIONS  
CORP.



**JURY DEMAND**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure and the Seventh Amendment of the Constitution of the United States, plaintiff, Tumbleweed Communications Corp., demands a trial by jury of all claims and issues triable as of right by jury in this action.

Dated: January 10, 2003

Respectfully submitted,

\_\_\_\_\_/s/  
GREGORY P. STONE

Attorneys for Plaintiff  
TUMBLEWEED COMMUNICATIONS CORP.