

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

COSTAR REALTY INFORMATION, INC.,

Plaintiff,

v.

CIVIX-DDI, LLC,

Defendant.

Case No. 1:12-cv-04968 (Lead Case)
Judge James F. Holderman

Consolidated for pretrial purposes with:
Case No. 1:12-cv-07091
Case No. 1:12-cv-08632

JURY TRIAL DEMANDED

CIVIX-DDI, LLC,

Plaintiff,

v.

LOOPNET, INC.

Defendant.

**COSTAR REALTY INFORMATION, INC.'S THIRD AMENDED COMPLAINT FOR
DECLARATORY JUDGMENT OF NON-INFRINGEMENT, INVALIDITY, AND
UNENFORCEABILITY, AND FOR BREACH OF CONTRACT
AGAINST CIVIX-DDI, LLC and JURY DEMAND**

Plaintiff CoStar Realty Information, Inc. (“CoStar” or “Plaintiff”), for its Third Amended Complaint against Defendant CIVIX-DDI, LLC, (“CIVIX” or “Defendant”), alleges as follows:

NATURE OF THE ACTION

1. This is an action by CoStar against CIVIX pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, for a declaratory judgment of non-infringement, invalidity, and unenforceability of United States Patent Nos. 6,385,622 (“the ’622 Patent”) (attached as **Exhibit A**), 6,415,291 (“the ’291 Patent”) (attached as **Exhibit B**), and 8,296,335 (“the ’335 Patent”) (attached as **Exhibit F**) (collectively, “the Asserted Patents”) under the Patent Laws of the United States, 35 U.S.C. §§ 101, *et seq.*, and for breach of contract under state law.

THE PARTIES

2. CoStar Realty Information, Inc. is a corporation organized and existing under the laws of the State of Delaware with its principal place of business and corporate offices located at 1331 L Street N.W., Washington DC 20005.

3. On information and belief, CIVIX-DDI, LLC is a Colorado limited liability company having its principal place of business at 1220 Prince Street, Alexandria, Virginia 22314. At least as late as November 1, 2007, on information and belief, CIVIX’s principal place of business was in this district, located at 125 South Wacker Drive, Suite 326, Chicago, Illinois 60606.

JURISDICTION AND VENUE

4. CoStar brings this action under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202 for a declaratory judgment of non-infringement, invalidity, and unenforceability of the Asserted Patents under the Patent Laws of the United States, 35 U.S.C. §§ 1 *et seq.*, and for breach of contract under state law. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a), and 1367(a).

5. On information and belief, this Court has personal jurisdiction over CIVIX because CIVIX has constitutionally sufficient contacts with the Northern District of Illinois to make personal jurisdiction proper in this Court. In particular, CIVIX has repeatedly availed itself of the jurisdiction of this Court through the filing of lawsuits in this district. Indeed, CIVIX recently filed two actions in this district. *See CIVIX-DDI, LLC v. Hotels.com, L.P., et al.*, N.D. Ill. Case No. 12-cv-08588 (filed Oct. 25, 2012); *CIVIX-DDI, LLC v. LoopNet, Inc.*, N.D. Ill. Case No. 12-cv-08632 (filed Oct. 29, 2012). CIVIX has recently alleged that its principal place of business is located in Alexandria Virginia, but at least as late as November 1, 2007, on information and belief, CIVIX's principal place of business was in this district, located at 125 South Wacker Drive, Suite 326, Chicago, Illinois 60606.

6. On June 22, 1999, CIVIX filed suit against Navigation Technologies Corporation in this district. *See CIVIX-DDI, LLC v. Navigation Techs. Corp.*, N.D. Ill. Case No. 99-cv-04140.

7. On June 3, 2003, CIVIX filed suit against Motorola, Inc., Verizon Wireless, Expedia, Inc., and Travelscape, Inc. in this district. *See CIVIX-DDI, LLC v. Motorola, Inc., et al.*, N.D. Ill. Case No. 03-cv-03792.

8. On December 13, 2003, CIVIX filed suit against Expedia, Inc. and Verizon Information Services in this district. *See CIVIX-DDI, LLC v. Expedia, Inc., et al.*, N.D. Ill. Case No. 04-cv-08031.

9. On December 6, 2005, CIVIX filed suit against the National Association of Realtors, Homestore Inc., Hotels.com, L.P., Hotels.com, GP LLC, Yahoo! Inc., Orbitz LLC, Travelocity.com Inc., and YellowPages.com LLC in this district. *See CIVIX-DDI, LLC v. Hotels.com, L.P., et al.*, N.D. Ill. Case No. 05-cv-06869.

10. On February 13, 2006, CIVIX filed suit against Orbitz LLC, Travelocity.com Inc., and YellowPages.com LLC in this district. *See CIVIX-DDI, LLC v. Orbitz, LLC, et al.*, N.D. Ill. Case No. 06-cv-00796.

11. On August 4, 2010, CIVIX filed suit against Midwest Real Estate Data, LLC in this district. *See CIVIX-DDI, LLC v. Midwest Real Estate Data, LLC, et al.*, N.D. Ill. Case No. 10-cv-04887.

12. CIVIX has long been represented in litigation by the law firm of Niro, Haller, & Niro, Ltd. (“Niro”), which is located in this district at 181 West Madison Street, Suite 4600, Chicago, Illinois 60602-4515. Niro has represented CIVIX in all of the cases in this district identified above.

13. On July 18, 2011, CIVIX sent a letter to Jon Coleman, General Counsel of CoStar regarding the patents asserted in this action and products of CoStar. CoStar responded on September 9, 2011.

14. On September 16, 2011, CIVIX responded to CoStar’s letter of September 9, 2011, stating that the following CoStar products infringe the ‘622 and ’291 Patents: CoStar Property Professional, CoStar Property Professional Retain, CoStar Tenants, CoStar Comps Professional and Showcase. CIVIX’s letter of September 16, 2011 is attached to this complaint as **Exhibit C**.

15. On January 3, 2012, CIVIX filed suit against LoopNet, Inc., in the Eastern District of Virginia. *See CIVIX-DDI, LLC v. LoopNet, Inc.*, E.D. Va. Case No. 12-cv-00002. On May 14, 2012, CIVIX filed a motion for leave to amend to file a first amended complaint adding CoStar Group, Inc. (“CoStar Group”) as a defendant in that action. The complaint that CIVIX sought leave to file asserted that CoStar Group had infringed claims of the Asserted Patents. CIVIX’s proposed first amended complaint is attached to this complaint as **Exhibit D**.

16. On June 21, 2012, the Court issued its memorandum order denying CIVIX's motion for leave to amend to add CoStar Group as a defendant. The Court's order denying CIVIX's motion to amend is attached to this complaint as **Exhibit E**.

17. On October 25, 2012, CIVIX again filed suit against Hotels.com, L.P. and Hotels.com GP LLC in this district, alleging the infringement of the '335 Patent. *See CIVIX-DDI, LLC v. Hotels.com, L.P., et al.*, N.D. Ill. Case No. 12-cv-08588.

18. On October 29, 2012, CIVIX filed suit against LoopNet, Inc. in this district, alleging the infringement of the '335 Patent. *See CIVIX-DDI, LLC v. LoopNet, Inc.*, N.D. Ill. Case No. 12-cv-08632.

19. On October 29, 2012, CIVIX and CoStar conferred pursuant to Fed. R. Civ. P. 26(f) regarding the current action. At that time, counsel for CIVIX notified counsel for CoStar that it intended to assert the '335 Patent against CoStar.

20. On November 1, 2012, this Court held a scheduling conference wherein CIVIX notified this Court of its intent to amend its counterclaims to add the '335 Patent.

21. Therefore, at the present time an actual, active, dispute, case, and controversy exists between CoStar, on the one hand, and CIVIX, on the other, as to the validity of the Asserted Patents and the infringement of those patents by CoStar. This controversy is of such immediacy and reality to warrant declaratory relief so that the parties may ascertain their rights and duties with respect to the Asserted Patents.

22. Accordingly, venue in the Northern District of Illinois is proper under 28 U.S.C. §§ 1391(b) and 1400(b).

COUNT ONE

Declaratory Judgment of Non-Infringement of the '622 Patent

23. CoStar incorporates by reference the allegations set forth in paragraphs 1 through 22 above, as though fully asserted herein.

24. CIVIX represents that it owns the '622 Patent, and has asserted that certain acts by CoStar infringe the '622 Patent.

25. CIVIX has alleged that CoStar's products infringe the '622 Patent. CoStar has not infringed and is not now infringing directly or indirectly, and has not induced or contributed to and is not now inducing or contributing to the infringement of, either literally or by application of the doctrine of equivalents, any claim of the '622 Patent.

26. CoStar seeks a declaratory judgment from this Court under Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. § 2201 declaring the '622 Patent to be not infringed by CoStar and granting CoStar all other declaratory relief to which it may be entitled.

27. CoStar does not infringe any valid claim of the '622 Patent at least because CoStar does not provide "a port for remotely accessing the portion of information via the link" as required by claims 20 and 26 of the '622 Patent. '622 Patent at 15:9-14. Thus CoStar, like Hotels.com, "never 'uses' the entire claimed system because it never puts into service the port." *See CIVIX-DDI, LLC v. Hotels.com, LP*, 809 F. Supp. 2d 882, 892 (N.D. Ill. 2011).

28. CoStar's non-infringement arguments are further detailed in its Local Patent Rule 2.3 Initial Non-Infringement, Unenforceability, and Invalidity Contentions in this case, dated February 26, 2013.

COUNT TWO

Declaratory Judgment of Invalidity of the '622 Patent

29. CoStar incorporates by reference the allegations set forth in paragraphs 1 through 28 above, as though fully asserted herein.

30. On information and belief, and based on CoStar's ongoing investigation to date, the claims of the '622 Patent are invalid because they fail to comply with one or more requirements of the Patent Laws of the United States, including, but not limited to, 35 U.S.C. §§ 102, 103, and/or 112.

31. CoStar seeks a declaratory judgment from this Court under Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. § 2201 declaring the '622 Patent to be invalid and/or unenforceable for reasons including, but not limited to, failure to comply with one or more of 35 U.S.C. §§ 102, 103, and 112, and granting CoStar all other declaratory relief to which it may be entitled.

32. On information and belief, one or more claims of the '622 Patent are invalid under 35 U.S.C. § 112 for at least lack of written description and/or lack of enablement.

33. On information and belief, one or more claims of the '622 Patent are invalid under 35 U.S.C. § 101 for failure to claim statutory subject matter.

34. On information and belief, one or more claims of the '622 Patent are invalid under 35 U.S.C. § 102 for at least the following Prior Art references:

- a. U.S. Patent No. 5,543,789 to Behr *et al.*, entitled "Computerised Navigation System," issued on August 6, 1996.
- b. The Topaz Hotel Services system, which was operated as a hotel location search service for San Francisco-area hotels that was made available on the Internet at least as early as September of 1994. The Topaz Hotel Search

Services were available on the Internet at the following URL:
<http://www.hotelres.com>.

- c. The Sabre system, provided by American Airlines to allow travel agents with the ability to make online airline, hotel, and car-rental reservations with a computer system. The Sabre System included a user interface that allowed users to search for hotel reservations in a particular geographic area. It was available before 1990.

35. On information and belief, one or more claims of the '622 Patent are invalid under 35 U.S.C. § 103 based on Prior Art references, including but not limited to those references cited in Paragraph 34 above, and/or other Prior Art references, including but not limited to the following:

- a. U.S. Patent No. 5,481,535 to Hershey, entitled "Datagram Message Communication Service Employing A Hybrid Network," issued on January 2, 1996.
- b. U.S. Patent No. 5,032,989 to Tornetta, entitled "Real Estate Search and Location System and Method," issued on July 16, 1991.
- c. U.S. Patent No. 5,543,789 to Behr *et al.*, entitled "Computerised Navigation System," issued on August 6, 1996.

36. CoStar's invalidity arguments are further detailed in its Local Patent Rule 2.3 Initial Non-Infringement, Unenforceability, and Invalidity Contentions in this case, dated February 26, 2013.

COUNT THREE

Declaratory Judgment of Non-infringement of the '291 Patent

37. CoStar incorporates by reference the allegations set forth in paragraphs 1 through 36 above, as though fully asserted herein.

38. CIVIX represents that it owns the '291 Patent, and has asserted that certain acts by CoStar infringe the '291 Patent.

39. CIVIX has alleged that CoStar's products infringe the '291 Patent. CoStar has not infringed and is not now infringing directly or indirectly, and has not induced or contributed to and is not now inducing or contributing to the infringement of, either literally or by application of the doctrine of equivalents, any claim of the '291 Patent.

40. CoStar seeks a declaratory judgment from this Court under Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. § 2201 declaring the '291 Patent to be not infringed by CoStar and granting CoStar all other declaratory relief to which it may be entitled.

41. CoStar does not infringe any valid claim of the '291 Patent at least because CoStar does not provide "a plurality of ports for accessing the database" as required by all claims of the '291 Patent. CoStar therefore, like Hotels.com, "never 'uses' the entire claimed system because it never puts into service the port." *See CIVIX-DDI, LLC v. Hotels.com, LP*, 809 F. Supp. 2d 882, 892 (N.D. Ill. 2011).

42. CoStar's non-infringement arguments are further detailed in its Local Patent Rule 2.3 Initial Non-Infringement, Unenforceability, and Invalidity Contentions in this case, dated February 26, 2013.

COUNT FOUR

Declaratory Judgment of Invalidity of the '291 Patent

43. CoStar incorporates by reference the allegations set forth in paragraphs 1 through 42 above, as though fully asserted herein.

44. On information and belief, and based on CoStar's ongoing investigation to date, the claims of the '291 Patent are invalid because they fail to comply with one or more requirements of the Patent Laws of the United States, including, but not limited to, 35 U.S.C. §§ 102, 103, and/or 112.

45. CoStar seeks a declaratory judgment from this Court under Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. § 2201 declaring the '291 Patent to be invalid and/or unenforceable for reasons including, but not limited to, failure to comply with one or more of 35 U.S.C. §§ 101, 102, 103, and 112, and granting CoStar all other declaratory relief to which it may be entitled.

46. On information and belief, one or more claims of the '291 Patent are invalid under 35 U.S.C. § 112 for at least lack of written description and/or lack of enablement.

47. On information and belief, one or more claims of the '291 Patent are invalid under 35 U.S.C. § 101 for failure to claim statutory subject matter.

48. On information and belief, one or more claims of the '291 Patent are invalid under 35 U.S.C. § 102 for at least the following Prior Art publications and/or references:

- a. U.S. Patent No. 5,543,789 to Behr *et al.*, entitled "Computerised Navigation System," issued on August 6, 1996.
- b. The Topaz Hotel Services system, which was operated as a hotel location search service for San Francisco-area hotels that was made available on the Internet at least as early as September of 1994. The Topaz Hotel Search

Services were available on the Internet at the following URL:
<http://www.hotelres.com>.

- c. The Sabre system, provided by American Airlines to allow travel agents with the ability to make online airline, hotel, and car-rental reservations with a computer system. The Sabre System included a user interface that allowed users to search for hotel reservations in a particular geographic area. It was available before 1990.

49. On information and belief, one or more claims of the '291 Patent are invalid under 35 U.S.C. § 103 based on Prior Art references, including but not limited to those cited in Paragraph 48 above, and/or other Prior Art references, including but not limited to the following:

- a. U.S. Patent No. 5,481,535 to Hershey, entitled "Datagram Message Communication Service Employing A Hybrid Network," issued on January 2, 1996.
- b. U.S. Patent No. 5,032,989 to Tornetta, entitled "Real Estate Search and Location System and Method," issued on July 16, 1991.
- c. U.S. Patent No. 5,543,789 to Behr *et al.*, entitled "Computerised Navigation System," issued on August 6, 1996.

50. CoStar's invalidity arguments are further detailed in its Local Patent Rule 2.3 Initial Non-Infringement, Unenforceability, and Invalidity Contentions in this case, dated February 26, 2013.

COUNT FIVE

Declaratory Judgment of Non-Infringement of the '335 Patent

51. CoStar incorporates by reference the allegations set forth in paragraphs 1 through 50 above, as though fully asserted herein.

52. CIVIX represents that it owns the '335 Patent, and has asserted that certain acts by CoStar infringe the '335 Patent.

53. CIVIX has alleged that CoStar's products infringe the '335 Patent. CoStar has not infringed and is not now infringing directly or indirectly, and has not induced or contributed to and is not now inducing or contributing to the infringement of, either literally or by application of the doctrine of equivalents, any claim of the '335 Patent.

54. CoStar seeks a declaratory judgment from this Court under Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. § 2201 declaring the '335 Patent to be not infringed by CoStar and granting CoStar all other declaratory relief to which it may be entitled.

55. CoStar does not infringe any valid claim of the '335 Patent at least because CoStar does not "determin[e], at the database, a plurality of advertisements in response to the request," as required by all claims of the '335 Patent.

56. CoStar's non-infringement arguments are further detailed in its Local Patent Rule 2.3 Initial Non-Infringement, Unenforceability, and Invalidity Contentions in this case, dated February 26, 2013.

COUNT SIX

Declaratory Judgment of Invalidity of the '335 Patent

57. CoStar incorporates by reference the allegations set forth in paragraphs 1 through 56 above, as though fully asserted herein.

58. On information and belief, and based on CoStar's ongoing investigation to date, the claims of the '335 Patent are invalid because they fail to comply with one or more requirements of the Patent Laws of the United States, including, but not limited to, 35 U.S.C. §§ 102, 103, and/or 112.

59. CoStar seeks a declaratory judgment from this Court under Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. § 2201 declaring the '335 Patent to be invalid and/or unenforceable for reasons including, but not limited to, failure to comply with one or more of 35 U.S.C. §§ 102, 103, and 112, and granting CoStar all other declaratory relief to which it may be entitled.

60. On information and belief, one or more claims of the '335 Patent are invalid under 35 U.S.C. § 112 for at least lack of written description and/or lack of enablement.

61. On information and belief, one or more claims of the '335 Patent are invalid under 35 U.S.C. § 101 for failure to claim statutory subject matter.

62. On information and belief, one or more claims of the '335 Patent are invalid under 35 U.S.C. § 102 for at least the following Prior Art references:

- a. The Prodigy system, which included the ability to plan a family trip and book airline and other reservations online. The Prodigy system included banner ads across the bottom of the screen and provided a Web browser to access its services over the Internet on the World Wide Web. The Prodigy system was available at least as early as 1991.
- b. The SabreVision system, provided by Sabre and the Reed Travel Group, allowed hotel directories to be installed in travel agencies linked to the Sabre system and subsequently accessed and used by travel agents. The SabreVision system included searchable hotel information, pictures, and maps. Hotels and hotel companies paid to advertise on the SabreVision system. It was available before 1990.

- c. The Topaz Hotel Services system, which was operated as a hotel location search service for San Francisco-area hotels that was made available on the Internet in 1994. The Topaz Hotel Search Services were available on the Internet at the following URL: <http://www.hotelres.com>.

63. On information and belief, one or more claims of the '335 Patent are invalid under 35 U.S.C. § 103 based on Prior Art references, including but not limited to those cited in Paragraph 62 above, and/or other Prior Art references, including but not limited to the following:

- a. The HomeView system, which was operated for uploading and searching available residential real-estate listings in the greater Boston area at least as early as January 1992.
- b. U.S. Patent No. 5,347,632 to Filepp, *et al.*, entitled "Reception System For An Interactive Computer Network And Method Of Operation," issued on September 13, 1994.

64. CoStar's invalidity arguments are further detailed in its Local Patent Rule 2.3 Initial Non-Infringement, Unenforceability, and Invalidity Contentions in this case, dated February 26, 2013.

COUNT SEVEN

Declaratory Judgment of Unenforceability Due to Inequitable Conduct

65. CoStar incorporates by reference the allegations set forth in paragraphs 1 through 64 above, as though fully asserted herein.

66. The Asserted Patents are unenforceable because, among other things, the named inventors and prosecuting attorneys, each of whom has a duty of candor and good faith when dealing with the USPTO, breached their duties in the prosecution of the applications that led to the issuance of the Asserted Patents and during reexamination of the '622 and '291 Patents by failing

to properly disclose to the USPTO material information and by making false and misleading statements, with the specific intent to deceive the USPTO.

67. The prosecuting attorneys and named inventors associated with the filing and/or prosecution and re-examination of the '622 and '291 Patents include, at least, the named inventors of the '622 and '291 Patents, and prosecuting attorney Curtis Vock.

68. The '622 and '291 Patents purport to be continuations of United States Patent Nos. 5,682,525 ("the '525 Patent") and 6,408,307 ("the '307 Patent").

69. CIVIX filed various lawsuits asserting the '525 Patent in and around 1999. One action was filed in the Northern District of Illinois against Navigation Technologies Corporation ("NavTech"), while three other lawsuits were filed in the District of Colorado against Microsoft Corporation and twenty-four other defendants.

70. Prior to the *NavTech* litigation, NavTech sought to provoke an interference at the USPTO between itself and CIVIX by filing U.S. Patent Application No. 09/179,299 (the "Interference Application"). NavTech sought to be declared the first and true inventor of certain mapping technologies described in both the Interference Application and the '525 Patent.

71. The prosecution histories of the '622 and '291 Patents contain no written evidence that CIVIX, including Mr. Vock, informed the PTO about the *NavTech* litigation or the Interference Application.

72. Upon information and belief, CIVIX had the specific intent to deceive and/or mislead the USPTO by failing to disclose, or failing adequately to disclose, the *NavTech* litigation and the Interference Application to the USPTO during the prosecution of the '622 and '291 Patents.

73. In *CIVIX v. Microsoft Corp.*, 84 F. Supp. 2d 1132 (D. Colo. 2000), the United States District Court for the District of Colorado granted defendants' summary judgment motions on the issue of non-infringement of the '525 Patent. The district court also construed terms in the '525 Patent that are also present in the '622 and '291 Patents.

74. The prosecution histories of the '622 and '291 Patents contain no written evidence that CIVIX disclosed to the USPTO information about the *Microsoft* litigation. For instance, there is no written evidence that CIVIX informed the USPTO that the District of Colorado had construed terms in the '525 Patent that are present in the '622 and '291 Patents. In addition, CIVIX failed to disclose the district court's order granting defendants' motion for summary judgment of non-infringement of the '525 Patent. The Information Disclosure Statements ("IDS") provided by CIVIX in connection with the prosecution of the '622 and '291 Patents fail to disclose the *Microsoft* litigation.

75. CIVIX has asserted in other lawsuits that Mr. Vock had oral conversations with the patent examiner regarding the *Microsoft* litigation. The written interview summaries of those conversations, however, do not make any mention of the *Microsoft* litigation.

76. CIVIX had an opportunity to enter a written record of the alleged discussions with the patent examiner into the prosecution history, but, upon information and belief, failed to do so.

77. Upon information and belief, CIVIX, including Mr. Vock, had the specific intent to deceive and/or mislead the USPTO by failing to disclose, or failing adequately to disclose, the *Microsoft* litigation to the USPTO during the prosecution of the '622 and '291 Patents.

78. In or around June 1999, the defendants in the *Microsoft* litigation filed motions for summary judgment of patent invalidity regarding the '525 Patent. Microsoft filed one such motion itself on November 5, 1999. Upon information and belief, that motion identified three

prior art references that Microsoft alleged invalidated various claim of the '525 Patent. CIVIX failed to identify any of the prior art on which Microsoft relied in its previous IDSs.

79. By June 1999, CIVIX had filed three different IDSs in connection with the prosecution of the '307 Patent. The first IDS, submitted to the USPTO on November 10, 1997, disclosed one patent. The second IDS, submitted to the USPTO on March 9, 1998, disclosed 16 patents. The third IDS, submitted to the USPTO on June 1, 1999, disclosed six patents and four other documents.

80. Fifteen months after Microsoft filed its summary judgment motion of invalidity, CIVIX submitted its fourth IDS to the USPTO on February 8, 2001. Upon information and belief, CIVIX's fourth IDS included the prior art on which Microsoft relied, but in "a mountain of material," that included approximately 244 U.S. patents, 64 published patent applications, and 290 non-patent references.

81. On August 12, 2001, after receiving the above described fourth IDS, the patent examiner reminded CIVIX that "[a]n applicant's duty of disclosure of material and information is not satisfied by presenting a patent examiner with 'a mountain of largely irrelevant [material] from which he is presumed to have been able . . . to have found the critical [material]. It ignores the real world conditions under which examiners work.'"

82. CIVIX's response to the August 12, 2001 office action did not assist the patent examiner in determining which patents, published applications, and non-patent references in its fourth IDS were most relevant to the prosecution of the '307 Patent. In fact, CIVIX's response did not even specify the three references on which Microsoft relied to prove invalidity.

83. CIVIX has asserted in other lawsuits that Mr. Vock and Mr. Semple had oral conversations with the patent examiner regarding the prior art set forth in its fourth IDS. The

written interview summaries of those conversations, however, do not make mention of the prior art set forth in the fourth IDS.

84. CIVIX had an opportunity to enter a written record of the alleged discussions with the patent examiner into the prosecution history, but, upon information and belief, failed to do so.

85. CIVIX submitted an IDS on January 17, 2002 in connection with the prosecution of the '291 Patent. The IDS, like the fourth IDS submitted in connection with the prosecution of the '307 Patent, contained approximately 600 references.

86. CIVIX did not submit an IDS in connection with the prosecution of the '622 Patent.

87. Upon information and belief, CIVIX, including Mr. Vock, had the specific intent to deceive and/or mislead the USPTO during the prosecution of the '622 and '291 Patents by (1) submitting an excessive number of largely irrelevant references to the patent examiner while failing to identify which pieces of material were most relevant, or (2) submitting no IDS to the USPTO at all.

88. On September 20, 2006, a request for ex parte re-examination of the '622 Patent was filed with the USPTO. On January 23, 2007, a request for ex parte re-examination of the '291 Patent was filed with the USPTO. Both requests were granted. Upon information and belief, CIVIX made affirmative misrepresentations of, and/or failed to disclose, material information to the USPTO during re-examination of the '622 and '291 Patents.

89. On January 21, 2009, CIVIX and its prosecution counsel submitted a declaration in connection with re-examination proceedings of the '622 and '291 Patents to overcome a USPTO invalidity rejection (the "swear-behind declaration"). The swear-behind declaration purports to describe the circumstances surrounding the claimed invention so as to establish a priority date that

antedates a dispositive prior art reference: U.S. Patent No. 4,482,535 (“Hershey”). The swear-behind declaration is signed by named inventors Mr. Semple and Mr. Bouve.

90. By submitting the swear behind declaration with Mr. Bouve’s signature, CIVIX represented to the USPTO that Mr. Bouve was competent to affirm and attest to the facts set forth in the declaration. The last two paragraphs of the declaration provide as follows:

All statement [sic] made herein of our personal knowledge are true and all statements on information and belief are believed to be true.

We make the above statements with the knowledge that under 18 U.S.C. § 1001, willful false statements and the like, so made, are punishable by fine or imprisonment, or both, and that such willful false statements may jeopardize the validity of any associated patent application or patent issued thereon.

91. Upon information and belief, CIVIX knew that Mr. Bouve had suffered at least two strokes, one in 1995 and one in 2002. CIVIX also knew that by 2007, Mr. Bouve had suffered substantial memory loss and had difficulty speaking intelligibly. Further, CIVIX litigation counsel, in connection with another CIVIX lawsuit involving the ’622 and ’291 Patents, informed the defendants’ counsel in that litigation that because of Mr. Bouve’s health problems, he was unfit for deposition.

92. The swear-behind declaration fails to note or otherwise make mention of any competence or capacity issues affecting Mr. Bouve or his recollection of the events related to the invention.

93. Upon information and belief, on March 16, 2009, counsel for Yahoo!, one of the defendants unable to depose Mr. Bouve, informed CIVIX’s re-examination counsel of Mr. Bouve’s health history and memory impairment.

94. The prosecution history of the re-examinations of the '622 and '291 Patents reveal no written evidence that CIVIX informed the USPTO of the unreliability of Mr. Bouve's declaration or made any effort to withdraw the swear-behind declaration.

95. Upon information and belief, CIVIX knew that the swear-behind declaration was material to the USPTO because the declaration was provided in response to the patent examiner's rejection of the claims as invalid in view of prior art and followed an interview with the patent examiner during which the appropriateness and relevance of such a declaration was allegedly discussed. Information concerning Mr. Bouve's health history and memory impairment was material to the USPTO's determination of patentability because a reasonable examiner would consider it important in deciding whether to allow the claims to survive re-examination, and because false declarations are inherently material.

96. CIVIX submitted a supplemental declaration, attesting to essentially the same facts as the swear-behind declaration, dated May 8, 2009, signed only by Mr. Semple.

97. Upon information and belief, CIVIX had the specific intent to deceive and/or mislead the USPTO during the re-examination of the '622 and '291 Patents when it failed to disclose Mr. Bouve's health history, memory impairment, and diminished capacity to the USPTO and sought to disguise that wrongdoing by later submitting a nearly identical declaration without his signature.

98. On January 21, 2009, and again in connection with the re-examination proceedings of the '622 and '291 Patents, Mr. Semple submitted a declaration in his individual capacity, but on behalf of CIVIX, to set forth his "intent and understanding as an inventor and person of ordinary skill in the relevant art . . . concerning the meaning and use of the capitalized version of 'Internet' versus the non-capitalized version, 'internet'" at the alleged time of conception.

99. According to Mr. Semple's declaration, those two terms were used interchangeably at the time he claimed to have invented the subject-matter claimed in the patent.

In the early 1990s, including 1994, as the Internet was becoming more well known, it was common to use the two different versions (capitalized/non-capitalized) of the "internet" interchangeably when making reference to the publicly accessible, global interconnection of computer networks which is today more consistently referred to as using the capitalized version, "the Internet." This is not only my opinion as an inventor and person of ordinary skill in the art, but is also consistent with and supported in literature from that period[.]

100. This position is directly at odds with the positions CIVIX advanced during claim construction in its litigations against such companies like Expedia, Inc. and Hotels.com. In the *Expedia* litigation, CIVIX argued during claim construction that a distinction existed between the two terms:

The parties agree that the Court should construe "internet" as "a group of networks that have been connected by means of a common communications protocol." The Court will adopt this construction. The parties disagree, however, on the construction of the term "Internet." In its briefing, CIVIX argues that a distinction exists between "internet" and "Internet." . . . Defendants, however, argue that both "internet" and "Internet" have the same construction.

101. The court ultimately agreed with CIVIX, and construed the terms differently. Relying in part on a 1994 book that Mr. Semple also cited in his "Internet declaration," the court construed "Internet" to mean "a system of linked computer networks, worldwide in scope, that typically is associated with using TCP/IP as a standard protocol," and "internet" to mean "a group of networks that have been connected by means of a common communications protocol."

102. In the *Hotels.com* litigation, CIVIX again argued for a distinction between the terms "Internet" and "internet," but the court ultimately disagreed with CIVIX.

[Hotels.com] contend[s] that "Internet" and "internet" have the same meaning in the '622 and '291 patents. [citation omitted]. Civix does not take an explicit stance on the issue, but appears to implicitly opposed [Hotels.com]'s position. [citations omitted].

The Court agrees with [Hotels.com] and thus declines to adhere to its earlier determination that the two terms carry different meanings.

103. Upon information and belief, in a letter dated March 16, 2009, counsel for defendant Yahoo! notified CIVIX's re-examination counsel that the position CIVIX advanced to the USPTO regarding the construction of capitalized "Internet" and non-capitalized "internet" was the opposite of the construction CIVIX asserted in the *Expedia* and *Hotels.com* lawsuits. There is no evidence that CIVIX identified this inconsistency to the USPTO or made any effort to withdraw Mr. Semple's Internet declaration.

104. Upon information and belief, CIVIX knew that Mr. Semple's Internet declaration was material to the USPTO because it was submitted after its claims had been rejected for invalidity in view of prior art that disclosed "Internet" references. Moreover, CIVIX's litigation position was material to the USPTO's determination of patentability because a reasonable patent examiner would consider it important in deciding whether to allow the claims to survive re-examination because of the obvious inconsistency.

105. Upon information and belief, CIVIX had the specific intent to deceive and/or mislead the USPTO during the re-examination proceedings of the '622 and '291 Patents when it took a position before the USPTO wholly contrary with its positions in lawsuits and failed to notify the USPTO of this inconsistency.

106. By engaging in at least the foregoing acts of misrepresentations, omissions, and deceit, CIVIX breached its duty of disclosure and engaged in inequitable conduct.

107. The '335 Patent is unenforceable because, among other things, it purports to be a continuation of the '291 Patent, and the '291 Patent was obtained through inequitable conduct, as described above. Because the content and asserted claims of the '335 Patent are not sufficiently

distinct from those in the '291 Patent that were obtained through inequitable conduct, the '335 Patent is unenforceable.

108. The '335 Patent is also unenforceable because the named inventors and prosecuting attorneys, each of whom has a duty of candor and good faith when dealing with the USPTO, breached their duties in the prosecution of the applications that led to the issuance of the '335 Patent by failing to properly disclose to the USPTO material information.

109. On January 29, 2003, CIVIX submitted to the USPTO, in connection with the application that led to the '335 Patent, a copy of the IDS it filed on January 17, 2002 in the application that led to the '291 Patent. That 31-page IDS included at least 245 U.S. patents, 63 foreign documents, and 270 non-patent documents.

110. On March 13, 2003, after receiving the above-described IDS, the patent examiner reminded CIVIX that “an applicant’s duty of disclosure of material and information is not satisfied by presenting a patent examiner with ‘a mountain or largely irrelevant [material] from which he is presumed to have been able . . . to have found the critical [material]. It ignores the real world conditions under which examiners work.”

111. The patent examiner further requested that CIVIX “identify the relevant references including relevant sections highlighted in each of the relevant references, since they are believed to be the most knowledgeable about the content of the information included in the IDS submitted.”

112. On February 4, 2005, CIVIX submitted to the USPTO, in connection with the application that led to the '335 Patent, another IDS listing thirty-six U.S. Patents and 109 non-patent documents.

113. On February 16, 2006, CIVIX submitted to the USPTO, in connection with the application that led to the '335 Patent, a 50-page IDS listing more than 580 U.S. Patents and non-patent documents.

114. On April 19, 2006, the patent examiner reiterated the same concerns that were expressed over three years earlier, reminding CIVIX that “an applicant’s duty of disclosure of material and information is not satisfied by presenting a patent examiner with ‘a mountain or largely irrelevant [material] from which he is presumed to have been able . . . to have found the critical [material].” The patent examiner again requested that CIVIX identify the relevant references and highlight relevant sections within those references.

115. On July 17, 2006, CIVIX responded by stating it would resubmit the IDS of February 16, 2006, with an additional column provided in which CIVIX would enter a “1” if the particular reference “[m]ay be relevant with respect to advertising” and a “2” if the particular reference was “[b]elieved to be cumulative to information of Code 1 or not believed to be relevant.” In the resubmitted IDS, CIVIX entered a “1” in the added column to denote that 120 of the references “[m]ay be relevant with respect to advertising.”

116. Upon information and belief, CIVIX focused only on advertising, even after it became readily apparent that the focus of CIVIX’s argument for patentability (both before the examiner and the Board) was not advertising, but the Internet. The examiner repeatedly had to beg CIVIX to provide detailed guidance (estimating that it would take nearly two months to review all of the art that CIVIX submitted), and the guidance that CIVIX provided was useless as to the real issue that ultimately mattered to CIVIX’s ability to secure allowance of the '335 Patent.

117. In a letter of October 11, 2006, the examiner noted that CIVIX’s use of the phrase “may be” did not properly identify the relevant references nor offer any further guidance to the

examiner, as “may be . . . includes the phrase may be not.” The examiner then requested, for a third time, that CIVIX identify the relevant references with relevant sections highlighted.

118. On February 12, 2007, named inventor Mr. Semple provided in a declaration a brief summary of just 34 of the disclosed references from prior IDSs, along with a brief summary of his opinion regarding how the references differed from the claims in the application, but failed to identify the relevant sections of each of these references, as the examiner had requested of CIVIX.

119. In that declaration, Mr. Semple failed to discuss various references which were relevant in teaching advertising, despite their inclusion in the IDS of July 20, 2006, including “A Practical Guide to Sabre Reservations and Ticketing” (1992) by Jeanne Semer-Purzycki; “The Official Guide to the Prodigy Service” (1991) by John L. Viescas; “Format Quick Reference Guide”; and the transcript of the “Galileo Deposition” and related exhibits.

120. In addition, on information and belief, to the extent the 34 references that Mr. Semple discussed mentioned the “Internet,” those references were “cherry-picked” to focus on references that post-dated CIVIX’s purported conception date, so that, were the examiner to rely on any of the 34 references to support the obviousness of the use of the Internet, CIVIX could try to “swear behind” such references.

121. For example, CIVIX discussed Golden (November 7, 1994), Wilder (January 9, 1995), Behr (August 6, 1996), and Graham (1995), and most glaringly Ogden (which was dated April 4, 1995 (a few days after CIVIX’s purported conception date) and which discussed the availability of CompuServe/Eaasy Sabre on the Internet), but CIVIX failed to summarize many relevant references from March 1994 (i.e., before CIVIX’s purported conception date), such as, for example and upon information and belief, other references that disclosed the use of

CompuServe on the Internet, which CIVIX knew it could not “swear behind” had they been cited by the examiner to support the obviousness of the Internet (e.g., “CompuServe Extends Information Superhighway with Enhanced Internet Access,” (March 11, 1994) by Gary Steiner; “CompuServe Access.” (March 11, 1994) by Berry Wheeler; “CompuServe Subscribers to Have R.C.S. Access,” (March 13, 1994) by Ed Jackson; “Access to CompuServe from the Internet Available Now,” PR Newswire (March 31, 1994); “CompuServe, Dow Plug Into Internet,” MacWeek, Volume 8, No. 12 (March 21, 1994) by Nathalie Welch; “Microfile - CompuServe’s New Services,” The Guardian, (March 24, 1994) by Jack Schofield).

122. On information and belief, CIVIX’s selection of which references to summarize was done with intent to deceive, was a violation of the Duty of Candor, and led directly to the allowance of the ’335 Patent on the ground that the prior art relied upon by the examiner to reject all pending claims failed to teach the obviousness of the Internet.

123. Upon information and belief, CIVIX knew (1) that use of the Internet was an important feature to the examiner during the prosecution of the ’335 Patent, in part from prior litigation and re-examinations, and (2) that several disclosed references taught the use of using the Internet as well as the obviousness of modifying prior non-Internet systems for use on the Internet. But CIVIX never indicated which of the references were most relevant to the examiner with respect to the Internet.

124. CIVIX also knew during prosecution of the ’335 Patent that the use of the Internet was important because of the necessity of the swear-behind declaration made by Mr. Semple during prosecution of the ’525 Patent to avoid anticipation by the Behr patent, U.S. Patent No. 5,543,789, a reference which was relevant in teaching use of the Internet. That swear-behind declaration was resubmitted during prosecution of the ’335 Patent.

125. In the declaration of February 12, 2007, in addition to failing to discuss the six aforementioned references which disclose the use of CompuServe on the Internet, Mr. Semple also failed to discuss references which were relevant in teaching the use of the Internet-like networking systems generally, despite their inclusion in the IDS of July 20, 2006, including “A Practical Guide to Sabre Reservations and Ticketing” (1992) by Jeanne Semer-Purzycki; “The Official Guide to the Prodigy Service” (1991) by John L. Viescas; “Format Quick Reference Guide”; “Rules and Reservations - Airline Computer Reservation Systems”, Airline Business (August 1, 1993); “Learning Apollo - Basic and Advanced Training,” Delmar Publishing (1994), by Talula Gunter; MAPBASE User Manual, Nextbase Limited, (1992–1993); and “Searching Dialog: The Complete Guide,” Dialog Information Services (August 1987).

126. CIVIX’s failure to point out these and other references relevant to advertising and use of the Internet, despite the examiner’s request for guidance, is relevant to all the asserted claims of the ’335 Patent, as claim 1, the only independent claim, pertains to “advertising over the Internet”, and all other claims of the ’335 Patent are dependent on claim 1.

127. On January 6, 2010, CIVIX argued in its appeal brief after final rejection by the patent examiner that none of the cited references, alone or in combination, taught or suggested use of the Internet, further suggesting that CIVIX knew use of the Internet was an important feature to the examiner during the prosecution of the ’335 Patent.

128. The importance of the Internet to the allowance of the ’335 Patent is also evidenced by the Board’s reversal of the examiners rejection, which led directly to the allowance of the ’335 Patent without CIVIX having ever identified or otherwise focused the examiner’s attention on those prior art references that rendered the use of the Internet obvious. Upon information and belief, CIVIX failed to point out such references even once it became clear that, but for the

(obvious) Internet limitation in each of the claims of the '335 Patent, the examiner's rejection would have been affirmed by the Board and the '335 Patent would never have issued.

129. Because MPEP § 1214.04 states that, if reversed by the Board of Patent Appeals, a patent examiner "should never regard such a reversal as a challenge to make a new search to uncover other and better references," CIVIX had strong motivation to refuse to highlight and indicate references for the examiner that taught use of the Internet, despite the fact that it knew such references existed and that the patent examiner had asked multiple times for such guidance. By failing to provide such guidance CIVIX failed to fulfill its Duty of Candor with intent to deceive.

130. Upon information and belief, by instead focusing on other limitations that turned out to be well-known and documented in the referenced cited by the examiner, CIVIX also led the examiner astray by not only hiding the Internet art, but by diverting the examiner's attention towards other features that ultimately were less material than the Internet — a fact that CIVIX certainly knew by the time of its appeal to the Board, but did nothing to rectify.

131. Upon information and belief, CIVIX, including at least Mr. Semple and Mr. Wray, had the specific intent to deceive and/or mislead the USPTO during the prosecution of the '622 and '291 Patents by submitting an excessive number of largely irrelevant references to the patent examiner while failing to identify which references were most relevant.

132. In addition, on July 18, 2008, during prosecution of '335 Patent, the examiner rejected all pending claims for failing to satisfy the written description requirement of 35 U.S.C. § 112, paragraph 1, in connection with the claimed "advertising over the Internet." (capital "I").

133. In response to the examiner's July 18, 2008 rejection, on August 19, 2008, CIVIX pointed the examiner to the references in the specification to "internet" (lowercase "i"), arguing

“Clearly, the communication link of the invention may utilize the Internet.” (capital “I”). Thus, in that argument, CIVIX was equating Internet with internet to overcome the examiner’s Section 112 rejection. This argument and position was the opposite of what CIVIX told the Expedia Court, where CIVIX argued that the terms were very different.

134. Then, on May 15, 2009, in an argument CIVIX made to overcome the examiner’s rejection of all pending claims over cited prior art (an argument that CIVIX continued to press during the appeal to the Board, and which ultimately prevailed, leading directly to the allowance of the ’335 Patent), CIVIX argued that the term “Internet” had a specific, narrow meaning that requires “a TCP/IP data transfer protocol” and allows for “a graphical display of data over the Internet, through services such as the World Wide Web, for example,” among other requirements for a network to constitute the Internet.

135. CIVIX also swore behind various “Internet” references during prosecution of patent applications related to the ’335 Patent by pointing to various documents that CIVIX argued established an early conception date by CIVIX. Those materials, including the “swear behind” declarations were submitted to the examiner during prosecution of the ’335 Patents. But those documents do not establish that CIVIX’s early conception date involved the use of TCP/IP or the worldwide scope of the “Internet,” as opposed to a more generic “internet” network.

136. In short, upon information and belief, throughout its lengthy history of prosecution and litigation, including the prosecution of the Asserted Patents and their related applications, CIVIX has deceived both the PTO and the Courts by taking whatever position it needs to take at that time with respect to the meaning of the words “Internet” and “internet.” If CIVIX needs to support an earlier invention date, or satisfy the written description requirement, then it claims the terms are generic, without any specific requirements. If CIVIX needs to distinguish prior art, or

obtain a certain claim construction (during prosecution or litigation) for purposes of validity or patentability, then it claims the prior art fails to disclose the claimed “Internet,” which CIVIX says requires TCP/IP protocol, worldwide scope, and even World Wide Web (WWW) ability, even though none of CIVIX’s “swear behind” materials and none of CIVIX’s patent specifications support any conception by CIVIX of such requirements at the relevant time frame.

137. The Duty of Candor owed to the PTO does not permit such gamesmanship, and the Asserted Patents would never have been allowed but for CIVIX’s ability to play such games in order to intentionally deceive the examiner to simultaneously (1) overcome rejections based on the written description requirement of 35 USC § 112 by equating “Internet” and “internet”, (2) “swear behind” cited references by pretending to have conceived of the claimed subject matter over the Internet (capital “I”) as early as mid-1994, and (3) distinguishing prior art rejections that teach every limitation of each claim of CIVIX’s patents but that may fail to expressly mention TCP/IP or the World Wide Web, but certainly teach remote networks with common protocols and wide geographic scope, and (4) burying the submitted prior art references that do, indeed, establish that it was very well-known and obvious, at the time of CIVIX’s purported invention to utilize the claimed subject matters on the Internet (including with TCP/IP on a worldwide scope).

138. To resolve the legal and factual questions raised by CIVIX, and to afford relief from the uncertainty and controversy raised by CIVIX’s allegations in its Complaint, CoStar is entitled to a declaratory judgment that the Asserted Patents are unenforceable by reason of inequitable conduct.

COUNT EIGHT

Declaratory Judgment of License and/or Patent Exhaustion

139. CoStar incorporates by reference the allegations set forth in paragraphs 1 through 138 above, as though fully asserted herein.

140. Upon information and belief, CIVIX's claims are barred because CoStar's allegedly infringing activities under the Asserted Patents are authorized by at least one license granted by CIVIX to a company that provides software to CoStar for use in the accused websites.

141. CIVIX and Microsoft Corporation entered into a license agreement (the "Microsoft License") in or before 2006. Upon information and belief, the Microsoft License includes a license to the Asserted Patents.

142. As a Microsoft customer, CoStar has a license for the Asserted Patents under the Microsoft License.

143. Upon information and belief, CIVIX's claims are barred by the doctrine of patent exhaustion.

144. To resolve the legal and factual questions raised by CIVIX, and to afford relief from the uncertainty and controversy raised by CIVIX's allegations, CoStar is entitled to a declaratory judgment that CoStar is licensed under the Asserted Patents and/or that CIVIX's rights under the Asserted Patents are exhausted with respect to CoStar.

COUNT NINE

Breach Of Contract

145. CoStar incorporates by reference the allegations set forth in paragraphs 1 through 144 above, as though fully asserted herein.

146. In January 2006, CIVIX granted Microsoft Corporation ("Microsoft") a license under a number of United States Patents (the "Patent License"), including the Asserted Patents. Based on information and belief, CIVIX's principle place of business at the time it granted the Patent License to Microsoft was 125 South Wacker Drive, Suite 300, Chicago, Illinois.

147. The Patent License extends to third parties who purchase, use, sell, and offer to sell any Microsoft product or service that is covered by any claim of CIVIX patents enumerated in the Patent License, including the Asserted Patents.

148. CIVIX covenanted not to sue Microsoft for any infringement arising out of the CIVIX patents enumerated in the Patent License, including the Asserted Patents. In particular, the Patent License states that:

CIVIX and its affiliates, parents, and subsidiaries further release and covenant not to sue MICROSOFT for any alleged direct or indirect patent infringement arising out of, or concerning, or relating to any prior or existing MICROSOFT software, product, equipment or service, or any technology embodied in any prior or existing MICROSOFT software, product equipment or service, including claims of infringement relating to, arising out of, or premised on the CIVIX Patents.

The Patent License extended the covenant not to sue to third party users of Microsoft's products and services covered by the CIVIX patents, stating that "[t]his release and covenant not to sue shall extend to third parties for their use of MICROSOFT software, products, equipment, services or technology."

149. CIVIX and Microsoft intended, through the Patent License and its covenant not to sue, to benefit direct and indirect Microsoft customers and end users of Microsoft technology. Therefore, such customers and end users are third-party beneficiaries of the Patent License.

150. CoStar licenses from Microsoft and uses certain Microsoft technology, products, and software, including but not limited to MapPoint and Bing Maps. All of the CoStar services that CIVIX has accused of infringement use, relate to, and/or incorporate Microsoft technology, products, and software that is licensed under the Patent License and that is covered by the covenant not to sue.

151. Therefore, under the covenant not to sue in the Patent License, CIVIX cannot sue or attempt to sue CoStar for infringement of the Asserted Patents and its attempt to sue CoStar constitutes a breach of the Patent License or an anticipatory breach of the Patent License.

152. Upon information and belief, Microsoft has fulfilled all of its obligations under the Patent License.

153. CoStar has suffered harm as a result of CIVIX's breach of the Patent License.

PRAYER FOR RELIEF

CoStar requests that the Court find in its favor and against CIVIX and that the Court grant the following relief:

1. The Court enter judgment declaring that CoStar has not willfully or otherwise infringed, contributed to the infringement of, nor induced infringement of any claim of the Asserted Patents;

2. The Court enter judgment declaring that the claims contained in the Asserted Patents are invalid and/or unenforceable;

3. The Court issue a declaration that this case is "exceptional" under 35 U.S.C. § 285;

4. The Court award, for Count Nine, nominal damages, compensatory damages, accompanying interest on damages, and costs in suit, to be paid by CIVIX in an amount to be proven at trial;

5. The Court order specific performance of the covenants not to sue in the CIVIX – Microsoft Patent License;

6. The Court enjoin CIVIX and all attorneys or other persons in active concert or participation with it from directly or indirectly charging infringement or instituting any further action for infringement of the Asserted Patents against CoStar or its customers or users.

7. The Court award CoStar its costs and expenses for this action, including reasonable attorneys' fees;

8. The Court award to CoStar further necessary and proper relief under 28 U.S.C. § 2202; and

9. The Court grant to CoStar such other and further relief as the Court deems just and appropriate.

DEMAND FOR JURY TRIAL

In the above-captioned action, CoStar hereby demands a trial by jury as to all issues in this action triable by jury.

* * *

Dated: March 5, 2013

Respectfully submitted,

/s/ David C. Van Dyke

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CERTIFICATE OF SERVICE

I hereby certify that on the March 5, 2013, I will electronically file the foregoing with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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Dated: March 5, 2013

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