

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

INVENTOR HOLDINGS, LLC,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 1:14-cv-186-GMS
)	
GOOGLE INC.,)	JURY TRIAL DEMANDED
)	
Defendant.)	
_____)	

FIRST AMENDED COMPLAINT

For its Complaint, Plaintiff Inventor Holdings, LLC ("Inventor Holdings"), by and through the undersigned counsel, alleges as follows:

THE PARTIES

1. Inventor Holdings is a Delaware limited liability company with a place of business located at Two High Ridge Park, Stamford, Connecticut 06905. Inventor Holdings is the current owner of patents developed by Walker Digital, LLC ("Walker Digital"), a research and development laboratory that has been the genesis for many successful businesses, including Priceline.com and Synapse Group, Inc.

2. Defendant Google Inc. ("Google") is a Delaware corporation with, upon information and belief, a place of business located at 1600 Amphitheatre Parkway, Mountain View, California 94043.

JURISDICTION AND VENUE

- 3. This action arises under the Patent Act, 35 U.S.C. § 1 *et seq.*
- 4. Subject matter jurisdiction is proper in this Court under 28 U.S.C. §§ 1331 and 1338.
- 5. Upon information and belief, Google conducts substantial business in this

forum, directly or through intermediaries, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct and/or deriving substantial revenue from goods and services provided to individuals in Delaware.

6. Venue is proper in this District pursuant to §§ 1391(b), (c) and 1400(b).

THE PATENT-IN-SUIT

7. On October 15, 2013, United States Patent No. 8,558,921 (the "'921 patent"), entitled "Systems And Methods For Suggesting Meta-Information To A Camera User" and listing Jay S. Walker, James A. Jorasch and Russell P. Sammon as inventors, was duly and lawfully issued by the U.S. Patent and Trademark Office ("USPTO"). A true and correct copy of the '921 patent is attached hereto as Exhibit A.

8. Inventor Holdings is the assignee and owner of the right, title and interest in and to the '921 patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement of it.

FACTUAL BACKGROUND

9. Walker Digital is a research and development laboratory that has invested many millions of dollars in the development of its intellectual property. Walker Digital was comprised of a diverse group of inventors who solve business problems by studying human behavior and designing innovative solutions utilizing modern information technologies. Walker Digital's invention team has created a portfolio of more than 700 U.S. and international patents in a wide range of industries that include retail, vending, credit cards, security, gaming, educational testing and entertainment. Jay Walker, the chairman of Walker Digital, is best known as the founder of Priceline.com, which

brought unprecedented technology and a new level of value to the travel industry. The business processes that guide Priceline.com's success were created in the invention lab of Walker Digital. As an inventor, Mr. Walker is named on more than 450 issued and pending U.S. and international patents.

10. Walker Digital invested large sums of money to develop the inventions of Mr. Walker and the team of innovators. This investment was used for many things, including the development of laboratory facilities to assist with the development and testing of new inventions which, in turn, generated additional new inventions. Many of these new inventions have been the genesis for successful businesses, including Priceline.com and Synapse Group, Inc. Revolutionary technologies, including the method and system for processing payments for remotely purchased goods claimed in the '921 patent, were a direct result of that investment. In September 2013, Walker Digital assigned patents in its patent portfolio, including the '921 patent, to Inventor Holdings in connection with a corporate restructuring. At that time, Inventor Holdings became a wholly-owned subsidiary of Patent Properties, Inc., which is a public company. Walker Digital has a controlling interest in Patent Properties, Inc., and Jay Walker is the Executive Chairman of Patent Properties, Inc.

11. The '921 patent represents important advances in the field of photo tagging. The subject matter of the '921 patent includes, but is not limited to, analysis of content of digital images and identifying objects in digital images.

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 8,558,921

12. Inventor Holdings repeats and realleges the allegations of paragraphs 1 through 11 as if fully set forth herein.

13. Without license or authorization and in violation of 35 U.S.C. § 271(a), Google has infringed and continues to infringe at least claim 16 of the '921 patent by making, using, offering for sale, and/or selling within this district and elsewhere in the United States and/or importing into this district and elsewhere in the United States, methods for facilitating analysis of a digital image, including, but not limited to, Picasa and Google+.

14. Inventor Holdings' initial complaint was filed on February 12, 2014.

15. Google was served the initial complaint on February 14, 2014.

16. Thus, Google has been on notice of the '921 patent since, at the latest, the date it was served the Complaint.

17. Upon information and belief, Google has not altered its infringing conduct after receiving the initial complaint.

18. Upon information and belief, Google's continued infringement despite its knowledge of the '921 patent and the accusations of infringement has been objectively reckless and willful.

19. In particular, Google's customers' and end-users' use of Google's products and services which use photo tagging software and services, such as Picasa and Google+, is facilitated by the use of analysis of content of digital images and identification of objects in digital images patented under the '921 patent. Thus, Google's customers and end-users are able to analyze content and identify objects in digital images when using such photo tagging products and services. In Google+, Google's customers and end-users are able to analyze content and identify objects in digital images with the Find My Face technology to automatically identify names of

people in digital images. In Picasa, Google's customers and end-users are able to analyze content and identify objects in digital images with face-matching technology to automatically identify names of people in digital images.

20. On information and belief, in order to generate profits and revenues, Google markets and promotes, e.g., through its website and sales personnel, the use of its products and services that infringe the '921 patent when used as intended by Google's customers and end-users. Google's customers and end-users use such products and services (including, e.g., Google's software). Google further instructs its customers and end-users how to use such products and services in a manner that infringes the '921 patent (e.g., through on-line technical documentation, instructions, and technical support). Google further instructs its customers and end-users to infringe the '921 patent through the products and services themselves, e.g., through on-line instructions and intuitive user interfaces, such as those found in Picasa and Google+.

21. In particular, Google instructs its customers and end-users through at least on-line support instructions and documentation over the Internet how to provide and analyze content and identify objects in digital pictures with the Find My Face technology to automatically identify names of people in digital images when using Google+. In Picasa, Google instructs its customers and end-users through at least on-line support instructions and documentation over the Internet how to provide and analyze content and identify objects in digital images with face-matching technology to automatically identify names of people in digital images.

22. Google still further makes such products and services accessible to its

customers and end-users via the Internet, thus enabling and encouraging its customers and end-users to use such products and services, including supporting software systems, to infringe the '921 patent.

23. On information and belief, even though Google has been aware of the '921 patent and that its customers and end-users infringe the '921 patent since as of February 12, 2014 and Google has neither made any changes to the functionality, operations, marketing, sales, technical support, etc. of such products and services to avoid infringing the '921 patent nor informed its customers or end-users how to avoid infringing the '921 patent. To date, Google has not identified a single action that it has taken to avoid infringement (e.g., by designing around or notifying its customers or end-users how to avoid infringement) by itself or its customers or end-users since it became aware of the '921 patent.

24. On information and belief, Google itself is unaware of any legal or factual basis that its actions solely, or in combination with the actions of its customers and end-users, do not constitute direct or indirect infringement of the '921 patent. To date, Google has not produced any opinion of counsel, request for opinion of counsel, evaluation, analysis, or investigation relating to the validity, scope, interpretation, construction, enforceability, unenforceability, or the infringement or potential infringement of any claim of the '921 patent.

25. As such, on information and belief, despite the information Google obtained from the original complaint in this action, Google continues to specifically intend for and encourage its customers and end-users to use its products and/or services in a manner that infringe the claims of the '921 patent. In addition, since at

least the filing of the original complaint in this action, Google has deliberately avoided taking any actions (e.g., designing around, or providing notice to its customers) to avoid confirming that its actions continue to specifically encourage its customers and end-users to use its products and/or services in a manner that infringe the claims of the '921 patent.

26. Google's actions of, *inter alia*, making, importing, using, offering for sale, and/or selling such products and/or services constitute an objectively high likelihood of infringement of the '921 patent, which was duly issued by the United States Patent and Trademark Office and is presumed valid. Since at least the filing of the original complaint, Google is aware that there is an objectively high likelihood that its actions constituted, and continue to constitute, infringement of the '921 patent and that the '921 patent is valid. Despite Google's knowledge of that risk, on information and belief, Google has not made any changes to the relevant operation of its products and/or services and has not provided its users and/or customers with instructions on how to avoid infringement the '921 patent. Instead, Google has continued to, and still is continuing to, among other things, make, use, offer for sale, and/or sell products and/or services patented under the '921 patent. As such, Google willfully, wantonly and deliberately infringed and is infringing the '921 patent in disregard of Inventor Holding's rights under the '921 patent.

27. Inventor Holdings is entitled to recover from Google the damages sustained by Inventor Holdings as a result of Google's infringement of the '921 patent in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

JURY DEMAND

Inventor Holdings hereby demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Inventor Holdings requests that this Court enter judgment against Google as follows:

- A. An adjudication that Google has infringed the '921 patent;
- B. A judgment that Google has induced infringement of the '921 patent;
- C. An award of damages to be paid by Google adequate to compensate Inventor Holdings for Google's past infringement of the '921 patent and any continuing or future infringement through the date such judgment is entered, including interest, costs, expenses and an accounting of all infringing acts including, but not limited to, those acts not presented at trial;
- D. A declaration that this case is exceptional under 35 U.S.C. § 285, and an award of Inventor Holdings' reasonable attorneys' fees;
- E. An award of enhanced damages pursuant to 35 U.S.C. § 284 for Google's willful infringement of the '921 patent subsequent to the date of its notice of the '921 patent; and
- F. An award to Inventor Holdings of such further relief at law or in equity as the Court deems just and proper.

Dated: July 25, 2014

STAMOULIS & WEINBLATT LLC

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