

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

Skky, LLC

Plaintiff,

V.

Facebook, Inc. and Instagram, LLC

Defendants.

Civil Action No. 0:16-00094-WMN-FLN

**SECOND AMENDED COMPLAINT;
DEMAND FOR JURY TRIAL (Leave to
File Granted May 18, 2016 Dkt. No. 58)**

COMPLAINT

This is a patent infringement case. Skky, LLC for its complaint against Facebook, Inc. and Instagram, LLC states and alleges as follows.

PARTIES, JURISDICTION, AND VENUE

Plaintiff Skky, LLC

1. Plaintiff Skky, LLC (“Skky”) is a Delaware limited liability company with its principal place of business at 888 Colwell Building, 123 Third Street N, Minneapolis, MN 55401.

Defendants

2. Defendant Facebook, Inc. is a Delaware corporation with its principal place of business at 1 Hacker Way, Menlo Park, California. Facebook, Inc. is registered to do business in and actively engages in business within the State of Minnesota, and

maintains an agent for service of process at Corporation Service Company, 2345 Rice Street, Suite 230, Roseville, MN 55113.

3. Defendant Instagram, LLC (“Instagram”) is a Delaware corporation with its principal place of business at 1601 Willow Road, Menlo Park, California.
4. Instagram is a subsidiary of Facebook. Defendants Facebook, Inc. and its subsidiaries, including Instagram, LLC are collectively referred to herein as “Facebook.”
5. This action arises under the patent laws of the United States, Title 35 of the United States Code. Accordingly, this Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).
6. This Court has personal jurisdiction over Facebook because, among other reasons, Facebook regularly conducts business in this judicial district. Facebook maintains at least the following web sites, www.facebook.com, www.instagram.com, and m.facebook.com, which citizens of Minnesota access. Facebook also provides its Facebook and Instagram mobile applications, which function as web sites, and which citizens of Minnesota access. Facebook, through its web sites and mobile applications, transmits compressed audio and/or visual files to customers or potential customers in Minnesota.
7. Venue is proper in this district under the provisions of 28 U.S.C. §§ 1391(b) and (c), and 1400(b) because, among other reasons, Facebook has conducted and continues to conduct regular and ongoing business in Minnesota. Additionally, Facebook has committed and continues to commit acts of direct and/or indirect

infringement in this district by making, using, importing, transferring for sale, and/or selling systems, services and products by way of infringing methods, and/or inducing others to perform method steps or utilize systems in Minnesota that are claimed in Skky's patents.

FACTUAL BACKGROUND

The Inventors and Patent-in-Suit

8. John Mikkelsen, one of the inventors of the asserted patents, grew up in Minnesota. Mr. Mikkelsen currently resides in Minnesota and is the CEO of Skky.
9. Dr. Robert Freidson, the other inventor in this case, earned his Ph.D in mathematics and computer science from Steklov Mathematical Institute (USSR Academy of Science, Leningrad, Russia). Since 1975, Dr. Freidson has been a professor in the Department of Mathematics at the St. Petersburg Electrical Engineering University. Dr. Freidson is the Chief Technology Officer of Skky.
10. In the 1990s, Mr. Mikkelsen worked in the entertainment film/music industry. During his work, Mr. Mikkelsen created uniquely edited song clips from copyrighted songs that he used as personal alert sounds on his computer. From this idea, Mr. Mikkelsen sought to solve the problem of transmitting real music samples (from songs or other multimedia files) to cellular phones.
11. In or around 2000, Mr. Mikkelsen was introduced to Dr. Freidson. At this time, Mr. Mikkelsen and Dr. Freidson recognized that available cellular phones were incapable of receiving, over the air, and playing back compressed audio and/or visual files, such as real copyrighted audio clips. Working together, Mr. Mikkelsen

and Dr. Freidson created a wireless server that could transmit, over the air, compressed digital media files to a newly developed cellular phone that could wirelessly receive and play back the transmitted compressed media files. In addition, Mr. Mikkelsen and Dr. Freidson created web sites, www.wavpop.com and www.wavpop.net, in an attempt to sell real clips of master recordings of songs from music licensed from record labels and other distributors for use on cellular phones. This website was created to facilitate the transmission of the compressed media file (i.e., licensed song clips) to the cellular phone. They formed a company called 4 Media, Inc., which later changed its name to Skky, Inc. In November 2015, the company converted to a Delaware Limited Liability Corporation and became Skky, LLC.

12. On June 16, 2009, the United States Patent and Trademark Office awarded United States Patent No. 7,548,875 (the “’875 patent”), titled *Media Delivery Platform*, to inventors John Mikkelsen and Dr. Robert Freidson. A complete and authentic copy of the ’875 patent is attached as Exhibit A. Mr. Mikkelsen and Dr. Freidson filed the provisional application resulting in the ’875 patent on June 27, 2001.
13. On November 18, 2014, the United States Patent and Trademark Office awarded United States Patent No. 8,892,465 (the “’465 patent”), titled *Media Delivery Platform*, to inventors John Mikkelsen and Dr. Robert Freidson. A complete and authentic copy of the ’465 patent is attached as Exhibit B. The ’465 patent claims priority from the ’875 patent.

14. During prosecution of the '465 patent, the Patent and Trademark Office considered the Office's post-*Alice* guidelines and determined that all the claims of the '465 patent claim patent eligible subject matter and surpassed the requirements set forth in 35 U.S.C. § 101.
15. No claim of the '465 patent relates to a fundamental economic practice.
16. No claim of the '465 patent relates to a method of organizing human activity.
17. No claim of the '465 patent could be performed in full by the human mind with a pen and paper.
18. No claim of the '465 patent recites or claims a mathematical relationship or formula.
19. No claim of the '465 patent recites or claims a computer merely receiving, processing, and storing data in a generic manner.
20. No claim of the '465 patent recites a longstanding and historical commercial practice.
21. As of June 2001, every claim of the '465 patent recites a combination of elements that were not well-understood, routine, or conventional to those of ordinary skill in the art.
22. Every claim of the '465 patent recites patent eligible subject matter as required by 35 U.S.C. § 101.
23. On May 19, 2015, the United States Patent and Trademark Office awarded United States Patent No. 9,037,502 (the "'502 patent"), titled *Media Delivery Platform*, to inventors John Mikkelsen and Dr. Robert Freidson. A complete and authentic

copy of the '502 patent is attached as Exhibit C. The '502 patent claims priority from the '875 patent.

24. During prosecution of the '502 patent, the Patent and Trademark Office considered the Office's post-*Alice* guidelines and determined that all the claims of the '502 patent claim patent eligible subject matter and surpassed the requirements set forth in 35 U.S.C. § 101.
25. No claim of the '502 patent relates to a fundamental economic practice.
26. No claim of the '502 patent relates to a method of organizing human activity.
27. No claim of the '502 patent could be performed in full by the human mind with a pen and paper.
28. No claim of the '502 patent recites or claims a mathematical relationship or formula.
29. No claim of the '502 patent recites or claims a computer merely receiving, processing, and storing data in a generic manner.
30. No claim of the '502 patent recites a longstanding and historical commercial practice.
31. As of June 2001, every claim of the '502 patent recites a combination of elements that were not well-understood, routine, or conventional to those of ordinary skill in the art.
32. Every claim of the '502 patent recites patent eligible subject matter as required by 35 U.S.C. § 101.

33. On August 25, 2015, the United States Patent and Trademark Office awarded United States Patent No. 9,118,693 (the “’693 patent”), titled *Media Delivery Platform*, to inventors John Mikkelsen and Dr. Robert Freidson. A complete and authentic copy of the ’693 patent is attached as Exhibit D. The ’693 patent claims priority from the ’875 patent.
34. During prosecution of the ’693 patent, the Patent and Trademark Office considered the Office’s post-*Alice* guidelines and determined that all the claims of the ’693 patent claim patent eligible subject matter and surpassed the requirements set forth in 35 U.S.C. § 101.
35. No claim of the ’693 patent relates to a fundamental economic practice.
36. No claim of the ’693 patent relates to a method of organizing human activity.
37. No claim of the ’693 patent could be performed in full by the human mind with a pen and paper.
38. No claim of the ’693 patent recites or claims a mathematical relationship or formula.
39. No claim of the ’693 patent recites or claims a computer merely receiving, processing, and storing data in a generic manner.
40. No claim of the ’693 patent recites a longstanding and historical commercial practice.
41. As of June 2001, every claim of the ’693 patent recites a combination of elements that were not well-understood, routine, or conventional to those of ordinary skill in the art.

42. Every claim of the '693 patent recites patent eligible subject matter as required by 35 U.S.C. § 101.

43. On September 1, 2015, the United States Patent and Trademark Office awarded United States Patent No. 9,124,717 (the "'717 patent"), titled *Media Delivery Platform*, to inventors John Mikkelsen and Dr. Robert Freidson. A complete and authentic copy of the '717 patent is attached as Exhibit E. The '717 patent claims priority from the '875 patent.

44. During prosecution of the '717 patent, the Patent and Trademark Office considered the Office's post-*Alice* guidelines and determined that all the claims of the '717 patent claim patent eligible subject matter and surpassed the requirements set forth in 35 U.S.C. § 101.

45. No claim of the '717 patent relates to a fundamental economic practice.

46. No claim of the '717 patent relates to a method of organizing human activity.

47. No claim of the '717 patent could be performed in full by the human mind with a pen and paper.

48. No claim of the '717 patent recites or claims a mathematical relationship or formula.

49. No claim of the '717 patent recites or claims a computer merely receiving, processing, and storing data in a generic manner.

50. No claim of the '717 patent recites a longstanding and historical commercial practice.

51. As of June 2001, every claim of the '717 patent recites a combination of elements that were not well-understood, routine, or conventional to those of ordinary skill in the art.
52. Every claim of the '717 patent recites patent eligible subject matter as required by 35 U.S.C. § 101.
53. On September 1, 2015, the United States Patent and Trademark Office awarded United States Patent No. 9,124,718 (the "'718 patent"), titled *Media Delivery Platform*, to inventors John Mikkelsen and Dr. Robert Freidson. A complete and authentic copy of the '718 patent is attached as Exhibit F. The '718 patent claims priority from the '875 patent.
54. During prosecution of the '718 patent, the Patent and Trademark Office considered the Office's post-*Alice* guidelines and determined that all the claims of the '718 patent claim patent eligible subject matter and surpassed the requirements set forth in 35 U.S.C. § 101.
55. No claim of the '718 patent relates to a fundamental economic practice.
56. No claim of the '718 patent relates to a method of organizing human activity.
57. No claim of the '718 patent could be performed in full by the human mind with a pen and paper.
58. No claim of the '718 patent recites or claims a mathematical relationship or formula.
59. No claim of the '718 patent recites or claims a computer merely receiving, processing, and storing data in a generic manner.

60. No claim of the '718 patent recites a longstanding and historical commercial practice.

61. As of June 2001, every claim of the '718 patent recites a combination of elements that were not well-understood, routine, or conventional to those of ordinary skill in the art.

62. Every claim of the '718 patent recites patent eligible subject matter as required by 35 U.S.C. § 101.

63. On December 1, 2015, the United States Patent and Trademark Office awarded United States Patent No. 9,203,870 (the "'870 patent"), titled *Media Delivery Platform*, to inventors John Mikkelsen and Dr. Robert Freidson. A complete and authentic copy of the '870 patent is attached as Exhibit G. The '870 patent claims priority from the '875 patent.

64. During prosecution of the '870 patent, the Patent and Trademark Office considered the Office's post-*Alice* guidelines and determined that all the claims of the '870 patent claim patent eligible subject matter and surpassed the requirements set forth in 35 U.S.C. § 101.

65. No claim of the '870 patent relates to a fundamental economic practice.

66. No claim of the '870 patent relates to a method of organizing human activity.

67. No claim of the '870 patent could be performed in full by the human mind with a pen and paper.

68. No claim of the '870 patent recites or claims a mathematical relationship or formula.

69. No claim of the '870 patent recites or claims a computer merely receiving, processing, and storing data in a generic manner.
70. No claim of the '870 patent recites a longstanding and historical commercial practice.
71. As of June 2001, every claim of the '870 patent recites a combination of elements that were not well-understood, routine, or conventional to those of ordinary skill in the art.
72. Every claim of the '870 patent recites patent eligible subject matter as required by 35 U.S.C. § 101.
73. On December 1, 2015, the United States Patent and Trademark Office awarded United States Patent No. 9,203,956 (the "'956 patent"), titled *Media Delivery Platform*, to inventors John Mikkelsen and Dr. Robert Freidson. A complete and authentic copy of the '956 patent is attached as Exhibit H. The '956 patent claims priority from the '875 patent.
74. During prosecution of the '956 patent, the Patent and Trademark Office considered the Office's post-*Alice* guidelines and determined that all the claims of the '956 patent claim patent eligible subject matter and surpassed the requirements set forth in 35 U.S.C. § 101.
75. No claim of the '956 patent relates to a fundamental economic practice.
76. No claim of the '956 patent relates to a method of organizing human activity.
77. No claim of the '956 patent could be performed in full by the human mind with a pen and paper.

78. No claim of the '956_ patent recites or claims a mathematical relationship or formula.
79. No claim of the '956 patent recites or claims a computer merely receiving, processing, and storing data in a generic manner.
80. No claim of the '956 patent recites a longstanding and historical commercial practice.
81. As of June 2001, every claim of the '956 patent recites a combination of elements that were not well-understood, routine, or conventional to those of ordinary skill in the art.
82. Every claim of the '956 patent recites patent eligible subject matter as required by 35 U.S.C. § 101.
83. On December 15, 2015, the United States Patent and Trademark Office awarded United States Patent No. 9,215,310 (the "'310 patent"), titled *Media Delivery Platform*, to inventors John Mikkelsen and Dr. Robert Freidson. A complete and authentic copy of the '310 patent is attached as Exhibit I. The '310 patent claims priority from the '875 patent.
84. During prosecution of the ' 310 patent, the Patent and Trademark Office considered the Office's post-*Alice* guidelines and determined that all the claims of the '310 patent claim patent eligible subject matter and surpassed the requirements set forth in 35 U.S.C. § 101.
85. No claim of the '310 patent relates to a fundamental economic practice.
86. No claim of the '310 patent relates to a method of organizing human activity.

87. No claim of the '310 patent could be performed in full by the human mind with a pen and paper.

88. No claim of the '310 patent recites or claims a mathematical relationship or formula.

89. No claim of the '310 patent recites or claims a computer merely receiving, processing, and storing data in a generic manner.

90. No claim of the '310 patent recites a longstanding and historical commercial practice.

91. As of June 2001, every claim of the '310 patent recites a combination of elements that were not well-understood, routine, or conventional to those of ordinary skill in the art.

92. Every claim of the '310 patent recites patent eligible subject matter as required by 35 U.S.C. § 101.

93. On December 23, 2015, the United States Patent and Trademark Office awarded United States Patent No. 9,219,810 (the "'810 patent"), titled *Media Delivery Platform*, to inventors John Mikkelsen and Dr. Robert Freidson. A complete and authentic copy of the '810 patent is attached as Exhibit J. The '810 patent claims priority from the '875 patent.

94. During prosecution of the '810 patent, the Patent and Trademark Office considered the Office's post-*Alice* guidelines and determined that all the claims of the '810 patent claim patent eligible subject matter and surpassed the requirements set forth in 35 U.S.C. § 101.

95. No claim of the '810 patent relates to a fundamental economic practice.
96. No claim of the '810 patent relates to a method of organizing human activity.
97. No claim of the '810 patent could be performed in full by the human mind with a pen and paper.
98. No claim of the '810 patent recites or claims a mathematical relationship or formula.
99. No claim of the '810 patent recites or claims a computer merely receiving, processing, and storing data in a generic manner.
100. No claim of the '810 patent recites a longstanding and historical commercial practice.
101. As of June 2001, every claim of the '810 patent recites a combination of elements that were not well-understood, routine, or conventional to those of ordinary skill in the art.
102. Every claim of the '810 patent recites patent eligible subject matter as required by 35 U.S.C. § 101
103. Mr. John Mikkelsen and Dr. Robert Freidson assigned the '465, '502, '693, '717, '718, '870, '956, '310 and '810 patents (collectively referred to herein as the Asserted Patents") to Skky. Skky remains the owner of the Asserted Patents.
104. Defendants do not have a license to any of the Asserted Patents.

The Evolution of Mobile Internet

105. The inventions in the Asserted Patents are entitled to priority to at least June 27, 2001.

106. At the time of invention, cellular phones, and the mobile Internet, were very different than they are today. At the time of invention, Internet access via cellular devices was rudimentary, at best offering simplistic websites consisting of text and basic audio tones. Websites were not yet designed to transmit compressed audio and/or visual files to cellular phones over the air because the then-existing phones were not yet manufactured to receive or playback such media files. Methods and systems for transmitting rich media content to mobile users over the air, as claimed in the Asserted Patents, did not exist.

107. Innovations in cellular technology, including inventions first disclosed in the asserted patents, were exposed to and drove Internet content providers, cellular service providers, and cellular manufacturers to develop cellular phones and over the air transmission systems and services to provide mobile users with rich media content. As cellular technology developed, utilizing the inventions claimed in the Asserted Patents, mobile devices became capable of accessing websites rich with higher quality media, including detailed color photos, audio recordings, and video clips. Stated in another way, innovations in cellular technology, such as that developed by Mr. Mikkelsen and Dr. Friedson and claimed in the Skky patents, motivated mobile services providers, together with Internet content providers, to change their web sites so that the content on their web sites could be delivered over the air to cellular devices incorporating Skky's patented technology.

108. In 1998, the first wireless networks able to comply with the International Mobile Telecommunications-2000 specifications for a third generation of mobile

telecommunications technology, was known as 3G. 3G allowed for an increase in the potential speed at which data could be one day be transferred wirelessly to cell phones.

109. CDMA2000, first offered in 2002, was a 3G system utilizing shared infrastructure with the existing second generation standard. The CDMA2000 system was subsequently used by cellular phones in the United States.
110. A fourth generation system, Long-Term Evolution, commonly referred to as LTE, was finalized in 2008 and made publically available in 2009. LTE further increased wireless transmission speeds. LTE utilizes orthogonal frequency-division multiplexing (“OFDM”) to transmit data and conserve power. Skky’s patents claim the use of OFDM in conjunction with the transmission of media data to mobile devices and did so almost seven years before the finalization of the LTE standard.
111. Contemporaneously, between 2006 and 2008, cellular hardware also began being developed with an increased focus on browsing a fully featured Internet, such as transmitting larger compressed audio and/or visual files.
112. For example, on June 29, 2007, six years after Mr. Mikkelsen and Dr. Friedson applied for their first patent, Apple released the first iPhone. Just over a year later, on July 11, 2008, a new version of the iPhone, capable of using 3G for data transmission was introduced. The iPhone did not support LTE transmission until a later iteration of the iPhone was released on September 21, 2012. One of the key elements of LTE is the use of OFDM as the signal bearer format. Skky’s

patents claim the use of OFDM in this cellular phone format and did so 11 years before Apple incorporated this technology into its iPhones.

113. Over the past decade, the amount of Internet traffic originating from cellular phones has grown steadily. Indeed, since 2007, the number of global mobile Internet users increased from approximately 400 million to more than 1.9 billion in 2015.

114. Mobile Internet ad spending is predicted to exceed \$68 billion dollars in 2015. This is reflected in Facebook's advertising revenue, 53% of which was derived from mobile traffic. Facebook's mobile advertising revenue has risen dramatically in the last few years, increasing over five fold since 2011.

115. In response to the rise of mobile Internet browsing, websites also changed to take advantage of the technological advances described above. Web site developers, including those at Facebook, began creating mobile versions of their web sites. These mobile versions featured optimized media, scaling, and resolution for viewing on cellular phones.

116. Web sites optimized for viewing on a mobile device are often designated by including a designator of "m" or "mobile" at the beginning of the web site URL. One such example is www.m.facebook.com.

117. These optimized web sites are designed to wirelessly transmit compressed audio and/or visual files to the user's cellular phone.

118. Some web sites are further optimized by detecting whether the user is accessing the web site through a mobile device or a conventional computer. If the

web site detects the user is utilizing a mobile device, the web site automatically displays its mobile version. Facebook's website, for example, is optimized in this manner.

119. Further, companies, such as Facebook and Instagram, have developed mobile applications and software designed specifically for mobile devices to facilitate the transfer of compressed audio and/or visual files.

120. Mobile applications have also grown in popularity since the Apple App Store launched in July of 2008. As of July 2015, there were 1.5 million apps available in the Apple App Store.

121. Accordingly, it is now easier than ever to access compressed audio and/or visual files wirelessly on a cellular phone, including over a cellular data connection.

The Importance of Mobile Devices to Facebook's Future

122. The ability to deliver rich media, including advertisements and audio/video files to mobile devices, has become critically important to Facebook as demonstrated by the following statements that Facebook made to the investing public and the Securities and Exchange Commission in its most recent Annual Report (2014), attached herein as Exhibit K.

- a. "The Facebook mobile app and website enable people to connect, share, discover, and communicate with each other on mobile devices and personal computers. Facebook is free and available throughout the world. We had 890 million daily active users (DAUs) on average in December 2014, an

increase of 18% compared to December 2013. We had 745 million DAUs who accessed Facebook from a mobile device on average in December 2014, an increase of 34% compared to December 2013.” Exhibit K, SEC Form 10-K (2014), at 5

- b. “Instagram is a mobile application that enables people to take photos or videos, customize them with filter effects, and share them with friends and followers in a photo feed or send them directly to friends.” *Id.*
- c. “We generate the substantial majority of our revenue from selling advertising placements to marketers. Our ads let marketers reach people on Facebook based on a variety of factors including age, gender, location, and interests. Marketers purchase ads that can appear in multiple places including in News Feed on mobile devices and personal computers, and on the right-hand side of personal computers.” *Id.*
- d. “The substantial majority of our revenue is currently generated from third parties advertising on Facebook. For 2014, 2013, and 2012, advertising accounted for 92%, 89% and 84%, respectively, of our revenue.” *Id.* at 12
- e. “We expect our ability to grow advertising revenue will continue to be dependent on our ability to generate revenue from ads displayed on mobile devices.” *Id.* at 10.
- f. “Facebook had 1.19 billion mobile monthly active users (MAUs) in December 2014. We anticipate that growth in mobile users will continue to be the driver of our growth for the foreseeable future and that usage through

personal computers will continue to decline worldwide. We generate a significant portion of our revenue from mobile advertising, which comprised approximately 69% of our overall advertising revenue in the fourth quarter of 2014.” *Id.* at 11.

- g. “Overall growth in DAUs (Daily Average Users) was driven by increased mobile usage of Facebook, and the number of DAUs accessing Facebook on personal computers decreased in December 2014 compared to the same period in 2013. We believe that use of Facebook through personal computers will continue to decline in all regions.” *Id.* at 34
- h. “Mobile DAUs. We define a mobile DAU as a user who accessed Facebook via a mobile application or via mobile versions of our website such as m.facebook.com, whether on a mobile phone or tablet, or used our Messenger app on a given day. Worldwide mobile DAUs increased 34% to 745 million on average during December 2014 from 556 million during December 2013. In all regions, an increasing number of our DAUs accessed Facebook through mobile devices on average during December 2014 as compared to the same period during 2013, with users in Brazil, India, and the United States representing key sources of mobile DAU growth on average during December 2014. On average during the month ended December 31, 2014, there were 589 million DAUs who accessed Facebook solely through mobile applications or our mobile website, increasing 49% from 395 million mobile-only DAUs during the same

period in 2013. The remaining mobile DAUs accessed Facebook from both mobile devices and personal computers. We anticipate that growth in mobile users will continue to be the driver of our user growth for the foreseeable future.” *Id.* at 34.

- i. “In 2014, we estimate that mobile advertising revenue represented approximately 65% of total advertising revenue, as compared with 45% in 2013.” *Id.* at 43.

COUNT I – PATENT INFRINGEMENT OF THE ’465 PATENT

123. Plaintiff incorporates and realleges herein by reference paragraphs 1 – 122.

124. Defendants have had constructive notice of the ’465 patent since it issued on November 18, 2014.

125. Defendants make, offer to sell, sell, use, distribute and service audio and/or visual files through their web sites and mobile applications, including, but not limited to m.facebook.com and the Instagram application, to cellular phones. These compressed audio and/or visual files are transmitted wirelessly to a cellular phone when a user accesses Defendants’ web site(s) and/or mobile applications. Thus, Defendants’ web site(s) and mobile applications containing audio and/or visual files, when used, practice the claimed inventions of the ’465 patent.

126. Defendants have infringed and continue to infringe one or more claims of the ’465 patent under 35 U.S.C. § 271(a), either literally or under the doctrine of equivalents, by making, using, selling, and/or offering for sale in the United States and/or importing into the United States products and or methods encompassed in

at least claims 1 and 4-11 of the '465 patent, including, for example, by making, using, selling, offering for sale, and/or importing compressed audio and/or visual files to cellular phones.

127. Third parties, collectively with Defendants, including Defendants' customers and those acting under Defendants' direction and control, have infringed, and continue to infringe, one or more claims of the '465 patent under 35 U.S.C. § 271(a), either literally or under the doctrine of equivalents, by making, using, selling, and/or offering for sale in the United State and/or importing into the United States products and/or methods encompassed in at least claims 1 and 4-11 of the '465 patent, including, for example, by making, using, selling, offering for sale, and/or importing compressed audio and/or visual files to cellular phones.

128. Defendants direct and control third parties related to the compression, storing, and/or transmission of compressed audio and/or visual files to cellular phones. Defendants are the masterminds in the scheme to transmit compressed audio and/or visual files to cellular phones. On information and belief, Defendants may direct and control the action of third parties through contractual or agency relationships to make compressed audio and/or visual files. On information and belief, Defendants may direct and control third parties through contractual or agency relationships to store compressed audio and/or visual files. On information and belief, Defendants may direct and control third parties through contractual or agency relationships to transmit compressed audio and/or visual files to cellular phones. Defendants and third parties act in concert to provide compressed audio

and/or visual files to the cellular phones of end users by compressing audio and/or visual files, storing audio and/or visual files, and transmitting audio and/or visual files in a manner that performs the claimed methods of the '465 patent. Further, Defendants require that third parties perform steps of the patented method in order to receive payment or other benefit from Defendants. Defendants also require that their customers perform steps to the patented method in order to use their web site(s) and mobile application(s).

129. Defendants have induced infringement, and continue to induce infringement, of at least claims 1 and 4-11 of the '465 patent under 35 U.S.C. § 271(b). Defendants have had knowledge of the '465 patent and its infringement at least since the filing of the original Complaint, Dkt. No. 1. Defendants have induced infringement of the '465 patent by causing, urging, encouraging, aiding, or instructing third parties, such as Defendants' end users, to perform one or more of the claimed methods of the '465 patent such that the third parties directly infringe the claimed methods of the '465 patent. As intended by Defendants, third parties , such as end users, use Defendants' web site(s) and mobile applications to access one or more of Defendants' web sites or mobile applications via a mobile device, and in so doing, transmit and/or receive audio and/or visual files, infringing the claims of the '465 patent. Defendants' web sites and mobile applications include m.facebook.com and the Instagram app as well as similar websites owned and/or operated by Defendants that transmit and/or receive audio and/or visual files.

130. For example, Defendants' web sites, m.facebook.com and

www.instagram.com, make available numerous compressed audio and/or visual files for download to a user's cellular phone that can be viewed on the cellular phone by the user. This necessarily requires that Defendants, acting with specific intent, urge, instruct, encourage, or seek aid from such third parties to compress audio and/or visual files to a cellular phone. By continuing the representative aforementioned activities with knowledge of the '465 patent at least since the filing of the original Complaint, Dkt. No. 1, Defendants, acting with specific intent, know that they are inducing infringement by causing the method steps of the '465 patent to be performed.

131. Defendants act with specific intent to induce third parties to infringe the '465 patent because Defendants seek to have compressed audio and/or visual files transmitted to cellular phones of end users. Defendants create and disseminate promotional and marketing material and offer instructions and/or technical information to encourage end users to seek transmission of compressed audio and/or visual files to cellular phones in a manner that infringes the '465 patent. By encouraging end users to seek transmission of compressed audio and/or visual files, Defendants specifically encourage and intend for third parties, either alone or in conjunction with Defendants, to compress, store, and/or transmit compressed audio and/or visual files to the cellular phones of the end users in a manner that infringes the '465 patent. Defendants have had knowledge that these actions induce end users of their web sites and mobile applications to directly infringe the

asserted claims of the '465 patent since at least the filing and service of Skky's original complaint.

132. Using Defendants' web sites and mobile applications as intended and as instructed by Defendants, end users of Defendants' web sites and mobile applications, including but not limited to m.facebook.com and the Instagram mobile application, view, receive, transmit, and/or download compressed audio and/or visual files on their mobile devices. In so doing, these end users directly infringe the asserted claims of the '465 patent. By providing their web sites to these end users, and by instructing and encouraging end users to access and use these web sites and mobile applications on their mobile devices, Defendants encourage and induce the infringement of the asserted claims of the '465 patent. Since at least the filing and service of Skky's original complaint, Defendants have had knowledge of the '465 patent and that end users of their web sites and mobile applications infringe the asserted claims of the '465 patent. Nevertheless, Defendants have continued to willingly, knowingly, and intentionally induce and encourage end users of their web sites and mobile applications to access these web sites and mobile applications in a manner that infringes the asserted claims of the '465 patent, as described above. Defendants have thus induced infringement of the '465 patent.

133. As an example, attached as Exhibit L is a preliminary and exemplary claim chart based only on publicly available information detailing one method of Defendants' infringement, directly or indirectly, of claims 1 and 4-11 of the '465

patent. This claim chart is not intended to be limiting in any way on Skky's right to modify this and any other claim chart or allege that other activities of Defendants infringe the '465 patent. Exhibit L is hereby incorporated by reference in its entirety. Each claim element in Exhibit L that is mapped to Facebook shall be considered an allegation within the meaning of the Federal Rules of Civil Procedure and therefore a response to each allegation is required. Plaintiff will consider a responsive element-by-element claim chart to be sufficient.

134. The infringement of the '465 patent injured and continues to harm Skky, and will cause irreparable injury and damage to Skky unless the Court enjoins Defendants from infringing the '465 patent.

135. Defendants' conduct in infringing the '465 patent renders this case exceptional within the meaning of 35 U.S.C. § 285.

COUNT II – PATENT INFRINGEMENT OF THE '502 PATENT

136. Plaintiff incorporates and realleges herein by reference paragraphs 1 – 135.

137. Defendants have had constructive notice of the '502 patent since it issued on May 19, 2015.

138. Defendants make, offer to sell, sell, use, distribute and service audio and/or visual files through their web sites and mobile applications, including but not limited to m.facebook.com and the Instagram application, to cellular phones. These compressed audio and/or visual files are transmitted wirelessly to a cellular phone when a user accesses Defendants' web site(s) and/or mobile applications.

Thus, Defendants' web site(s) and mobile applications containing audio and/or visual files, when used, practice the claimed inventions of the '502 patent.

139. Defendants have infringed and continue to infringe one or more claims of the '502 patent under 35 U.S.C. § 271(a), either literally or under the doctrine of equivalents, by making, using, selling, and/or offering for sale in the United States and/or importing into the United States products and or methods encompassed in at least claims 1-8 of the '502 patent, including, for example, by making, using, selling, offering for sale, and/or importing compressed audio and/or visual files to cellular phones.

140. Third parties, collectively with Defendants, including Defendants' customers and those acting under Defendants' direction and control, have infringed, and continue to infringe, one or more claims of the '502 patent under 35 U.S.C. § 271(a), either literally or under the doctrine of equivalents, by making, using, selling, and/or offering for sale in the United State and/or importing into the United States products and/or methods encompassed in at least claims 1-8 of the '502 patent, including, for example, by making, using, selling, offering for sale, and/or importing compressed audio and/or visual files to cellular phones.

141. Defendants direct and control third parties related to the compression, storing, and/or transmission of compressed audio and/or visual files to cellular phones.

Defendants are the masterminds in the scheme to transmit compressed audio and/or visual files to cellular phones. On information and belief, Defendants may direct and control the action of third parties through contractual or agency

relationships to make compressed audio and/or visual files. On information and belief, Defendants may direct and control third parties through contractual or agency relationships to store compressed audio and/or visual files. On information and belief, Defendants may direct and control third parties through contractual or agency relationships to transmit compressed audio and/or visual files to cellular phones. Defendants and third parties act in concert to provide compressed audio and/or visual files to the cellular phones of end users by compressing audio and/or visual files, storing audio and/or visual files, and transmitting audio and/or visual files in a manner that performs the claimed methods of the '502 patent. Further, Defendants require that third parties perform steps of the patented method in order to receive payment or other benefit from Defendants. Defendants also require that their customers perform steps to the patented method in order to use their web site(s) and mobile application(s).

142. Defendants have induced infringement, and continue to induce infringement, of at least claims 1-8 of the '502 patent under 35 U.S.C. § 271(b). Defendants have had knowledge of the '502 patent and its infringement at least since the filing of the original Complaint, Dkt. No. 1. Defendants have induced infringement of the '502 patent by causing, urging, encouraging, aiding, or instructing third parties, such as Defendants' end users, to perform one or more of the claimed methods of the '502 patent such that the third parties directly infringe the claimed methods of the '502 patent. As intended by Defendants, third parties, such as end users, use Defendants' web site(s) and mobile applications to access one of

Defendants' web sites or mobile applications via a mobile device, and in so doing, transmit and/or receive audio and/or visual files, infringing the claims of the '502 patent. Defendants' web sites and mobile applications include m.facebook.com and the Instagram app as well as similar websites owned and/or operated by Defendants that transmit and/or receive audio and/or visual files.

143. For example, Defendants' web sites, m.facebook.com and www.instagram.com, make available numerous compressed audio and/or visual files for download to a user's cellular phone that can be viewed on the cellular phone by the user. This necessarily requires that Defendants, acting with specific intent, urge, instruct, encourage, or seek aid from such third parties to compress audio and/or visual files to a cellular phone. By continuing the representative aforementioned activities with knowledge of the '502 patent at least since the filing of the original Complaint, Dkt. No. 1, Defendants, acting with specific intent, know, that they are inducing infringement by causing the method steps of the '502 patent to be performed.

144. Defendants act with specific intent to induce third parties to infringe the '502 patent because Defendants seek to have compressed audio and/or visual files transmitted to cellular phones of end users. Defendants create and disseminate promotional and marketing material and offer instructions and/or technical information to encourage end users to seek transmission of compressed audio and/or visual files to cellular phones in a manner that infringes the '502 patent. By encouraging end users to seek transmission of compressed audio and/or visual

files, Defendants specifically encourage and intend for third parties, either alone or in conjunction with Defendants, to compress, store, and/or transmit compressed audio and/or visual files to the cellular phones of the end users in a manner that infringes the '502 patent. Defendants have had knowledge that these actions induce end users of their web sites and mobile applications to directly infringe the asserted claims of the '502 patent since at least the filing and service of Skky's original complaint.

145. Using Defendants' web sites and mobile applications as intended and as instructed by Defendants, end users of Defendants' web sites and mobile applications, including but not limited to m.facebook.com and the Instagram mobile application, view, receive, transmit, and/or download compressed audio and/or visual files on their mobile devices. In so doing, these end users directly infringe the asserted claims of the '502 patent. By providing their web sites to these end users, and by instructing and encouraging end users to access and use these web sites and mobile applications on their mobile devices, Defendants encourage and induce the infringement of the asserted claims of the '502 patent. Since at least the filing and service of Skky's original complaint, Defendants have had knowledge of the '502 patent and that end users of their web sites and mobile applications infringe the asserted claims of the '502 patent. Nevertheless, Defendants have continued to willingly, knowingly, and intentionally induce and encourage end users of their web sites and mobile applications to access these web sites and mobile applications in a manner that infringes the asserted claims of the

'502 patent, as described above. Defendants have thus induced infringement of the '502 patent.

146. As an example, attached as Exhibit M is a preliminary and exemplary claim chart based only on publicly available information detailing one method of Defendants' infringement, directly and/or indirectly, of claims 1-8 of the '502 patent. This claim chart is not intended to be limiting in any way on Skky's right to modify this and any other claim chart or allege that other activities of Defendants infringe the '502 patent. Exhibit M is hereby incorporated by reference in its entirety. Each claim element in Exhibit M that is mapped to Facebook shall be considered an allegation within the meaning of the Federal Rules of Civil Procedure and therefore a response to each allegation is required. Plaintiff will consider a responsive element-by-element claim chart to be sufficient.

147. The infringement of the '502 patent injured and continues to harm Skky, and will cause irreparable injury and damage to Skky unless the Court enjoins Defendants from infringing the '502 patent.

148. Defendants' conduct in infringing the '502 patent renders this case exceptional within the meaning of 35 U.S.C. § 285.

COUNT III – PATENT INFRINGEMENT OF THE '693 PATENT

149. Plaintiff incorporates and realleges herein by reference paragraphs 1 – 148.

150. Defendants have had constructive notice of the '693 patent since it issued on August 25, 2015.

151. Defendants make, offer to sell, sell, use, distribute and service audio and/or visual files through their web sites and mobile applications, including but not limited to m.facebook.com and the Instagram application, to cellular phones. These compressed audio and/or visual files are transmitted wirelessly to a cellular phone when a user accesses Defendants' web site(s) and/or mobile applications. Thus, Defendants' web site(s) and mobile applications containing audio and/or visual files, when used, practice the claimed inventions of the '693 patent.
152. Defendants have infringed and continue to infringe one or more claims of the '693 patent under 35 U.S.C. § 271(a), either literally or under the doctrine of equivalents, by making, using, selling, and/or offering for sale in the United States and/or importing into the United States products and or methods encompassed in at least claims 1-6 of the '693 patent, including, for example, by making, using, selling, offering for sale, and/or importing compressed audio and/or visual files to cellular phones.
153. Third parties, collectively with Defendants, including Defendants' customers and those acting under Defendants' direction and control, have infringed, and continue to infringe, one or more claims of the '693 patent under 35 U.S.C. § 271(a), either literally or under the doctrine of equivalents, by making, using, selling, and/or offering for sale in the United State and/or importing into the United States products and/or methods encompassed in at least claims 1-6 of the '693 patent, including, for example, by making, using, selling, offering for sale, and/or importing compressed audio and/or visual files to cellular phones.

Defendants direct and control third parties related to the compression, storing, and/or transmission of compressed audio and/or visual files to cellular phones. Defendants are the masterminds in the scheme to transmit compressed audio and/or visual files to cellular phones. On information and belief, Defendants may direct and control the action of third parties through contractual or agency relationships to make compressed audio and/or visual files. On information and belief, Defendants may direct and control third parties through contractual or agency relationships to store compressed audio and/or visual files. On information and belief, Defendants may direct and control third parties through contractual or agency relationships to transmit compressed audio and/or visual files to cellular phones. Defendants and third parties act in concert to provide compressed audio and/or visual files to the cellular phones of end users by compressing audio and/or visual files, storing audio and/or visual files, and transmitting audio and/or visual files in a manner that performs the claimed methods of the '693 patent. Further, Defendants require that third parties perform steps of the patented method in order to receive payment or other benefit from Defendants. Defendants also require that their customers perform steps to the patented method in order to use their web site(s) and mobile application(s).

154. Defendants have induced infringement, and continue to induce infringement, of at least claims 1-6 of the '693 patent under 35 U.S.C. § 271(b). Defendants have had knowledge of the '693 patent and its infringement at least since the filing of the original Complaint, Dkt. No. 1. Defendants have induced infringement of

the '693 patent by causing, urging, encouraging, aiding, or instructing third parties, such as Defendants' end users, to perform one or more of the claimed methods of the '693 patent such that the third parties directly infringe the claimed methods of the '693 patent. As intended by Defendants, users of Defendants' web site(s) and mobile applications access one of Defendants' web sites or mobile applications via a mobile device, and in so doing, transmit and/or receive audio and/or visual files, infringing the claims of the '693 patent. Defendants' web sites and mobile applications include m.facebook.com and the Instagram app as well as similar websites owned and/or operated by Defendants that transmit and/or receive audio and/or visual files.

155. For example, Defendants' web sites, m.facebook.com and www.instagram.com, make available numerous compressed audio and/or visual files for download to a user's cellular phone that can be viewed on the cellular phone by the user. This necessarily requires that Defendants, acting with specific intent, urge, instruct, encourage, or seek aid from such third parties to compress audio and/or visual files to a cellular phone. By continuing the representative aforementioned activities with knowledge of the '693 patent at least since the filing of the original Complaint, Dkt. No. 1, Defendants, acting with specific intent, know, that they are inducing infringement by causing the method steps of the '693 patent to be performed.

156. Defendants act with specific intent to induce third parties to infringe the '693 patent because Defendants seek to have compressed audio and/or visual files

transmitted to cellular phones of end users. Defendants create and disseminate promotional and marketing material and offer instructions and/or technical information to encourage end users to seek transmission of compressed audio and/or visual files to cellular phones in a manner that infringes the '693 patent. By encouraging end users to seek transmission of compressed audio and/or visual files, Defendants specifically encourage and intend for third parties, either alone or in conjunction with Defendants, to compress, store, and/or transmit compressed audio and/or visual files to the cellular phones of the end users in a manner that infringes the '693 patent. Defendants have had knowledge that these actions induce end users of their web sites and mobile applications to directly infringe the asserted claims of the '693 patent since at least the filing and service of Skky's original complaint.

157. Using Defendants' web sites and mobile applications as intended and as instructed by Defendants, end users of Defendants' web sites and mobile applications, including but not limited to m.facebook.com and the Instagram mobile application, view, receive, transmit, and/or download compressed audio and/or visual files on their mobile devices. In so doing, these end users directly infringe the asserted claims of the '693 patent. By providing their web sites to these end users, and by instructing and encouraging end users to access and use these web sites and mobile applications on their mobile devices, Defendants encourage and induce the infringement of the asserted claims of the '693 patent. Since at least the filing and service of Skky's original complaint, Defendants have

had knowledge of the '693 patent and that end users of their web sites and mobile applications infringe the asserted claims of the '693 patent. Nevertheless, Defendants have continued to willingly, knowingly, and intentionally induce and encourage end users of their web sites and mobile applications to access these web sites and mobile applications in a manner that infringes the asserted claims of the '693 patent, as described above. Defendants have thus induced infringement of the '693 patent.

158. As an example, attached as Exhibit N is a preliminary and exemplary claim chart based only on publicly available information detailing one method of Defendants' infringement, directly and/or indirectly, of claims 1-6 of the '693 patent. This claim chart is not intended to be limiting in any way on Skky's right to modify this and any other claim chart or allege that other activities of Defendants infringe the '693 patent. Exhibit N is hereby incorporated by reference in its entirety. Each claim element in Exhibit N that is mapped to Facebook shall be considered an allegation within the meaning of the Federal Rules of Civil Procedure and therefore a response to each allegation is required. Plaintiff will consider a responsive element-by-element claim chart to be sufficient.

159. The infringement of the '693 patent injured and continues to harm Skky, and will cause irreparable injury and damage to Skky unless the Court enjoins Defendants from infringing the '693 patent.

160. Defendants' conduct in infringing the '693 patent renders this case exceptional within the meaning of 35 U.S.C. § 285.

COUNT IV – PATENT INFRINGEMENT OF THE '717 PATENT

161. Plaintiff incorporates and realleges herein by reference paragraphs 1 - 160.

162. Defendants have had constructive notice of the '717 patent since it issued on September 1, 2015.

163. Defendants make, offer to sell, sell, use, distribute and service audio and/or visual files through their web sites and mobile applications, including, but not limited to m.facebook.com and the Instagram application, to cellular phones.

These compressed audio and/or visual files are transmitted wirelessly to a cellular phone when a user accesses Defendants' web site(s) and/or mobile applications.

Thus, Defendants' web site(s) and mobile applications containing audio and/or visual files, when used, practice the claimed inventions of the '717 patent.

164. Defendants have infringed and continue to infringe one or more claims of the '717 patent under 35 U.S.C. § 271(a), either literally or under the doctrine of equivalents, by making, using, selling, and/or offering for sale in the United States and/or importing into the United States products and or methods encompassed in at least claims 1-6 of the '717 patent, including, for example, by making, using, selling, offering for sale, and/or importing compressed audio and/or visual files to cellular phones.

165. Third parties, collectively with Defendants, including Defendants' customers and those acting under Defendants' direction and control, have infringed, and continue to infringe, one or more claims of the '717 patent under 35 U.S.C. § 271(a), either literally or under the doctrine of equivalents, by making, using,

selling, and/or offering for sale in the United State and/or importing into the United States products and/or methods encompassed in at least claims 1-6 of the '717 patent, including, for example, by making, using, selling, offering for sale, and/or importing compressed audio and/or visual files to cellular phones.

166. Defendants direct and control third parties related to the compression, storing, and/or transmission of compressed audio and/or visual files to cellular phones. Defendants are the masterminds in the scheme to transmit compressed audio and/or visual files to cellular phones. On information and belief, Defendants may direct and control the action of third parties through contractual or agency relationships to make compressed audio and/or visual files. On information and belief, Defendants may direct and control third parties through contractual or agency relationships to store compressed audio and/or visual files. On information and belief, Defendants may direct and control third parties through contractual or agency relationships to transmit compressed audio and/or visual files to cellular phones. Defendants and third parties act in concert to provide compressed audio and/or visual files to the cellular phones of end users by compressing audio and/or visual files, storing audio and/or visual files, and transmitting audio and/or visual files in a manner that performs the claimed methods of the '717 patent. Further, Defendants require that third parties perform steps of the patented method in order to receive payment or other benefit from Defendants. Defendants also require that their customers perform steps to the patented method in order to use their web site(s) and mobile application(s).

167. Defendants have induced infringement, and continue to induce infringement, of at least claims 1-6 of the '717 patent under 35 U.S.C. § 271(b). Defendants have had knowledge of the '717 patent and its infringement at least since the filing of the original Complaint, Dkt. No. 1. Defendants have induced infringement of the '717 patent by causing, urging, encouraging, aiding, or instructing third parties, such as Defendants' end users, to perform one or more of the claimed methods of the '717 patent such that the third parties directly infringe the claimed methods of the '717 patent. As intended by Defendants, users of Defendants' web site(s) and mobile applications access one of Defendants' web sites or mobile applications via a mobile device, and in so doing, transmit and/or receive audio and/or visual files, infringing the claims of the '717 patent. Defendants' web sites and mobile applications include m.facebook.com and the Instagram app as well as similar websites owned and/or operated by Defendants that transmit and/or receive audio and/or visual files.

168. For example, Defendants' web sites, m.facebook.com and www.instagram.com, make available numerous compressed audio and/or visual files for download to a user's cellular phone that can be viewed on the cellular phone by the user. This necessarily requires that Defendants, acting with specific intent, urge, instruct, encourage, or seek aid from such third parties to compress audio and/or visual files to a cellular phone. By continuing the representative aforementioned activities with knowledge of the '717 patent at least since the filing of the original Complaint, Dkt. No. 1, Defendants, acting with specific

intent, know , that they are inducing infringement by causing the method steps of the '717 patent to be performed.

169. Defendants act with specific intent to induce third parties to infringe the '717 patent because Defendants seek to have compressed audio and/or visual files transmitted to cellular phones of end users. Defendants create and disseminate promotional and marketing material and offer instructions and/or technical information to encourage end users to seek transmission of compressed audio and/or visual files to cellular phones in a manner that infringes the '717 patent. By encouraging end users to seek transmission of compressed audio and/or visual files, Defendants specifically encourage and intend for third parties, either alone or in conjunction with Defendants, to compress, store, and/or transmit compressed audio and/or visual files to the cellular phones of the end users in a manner that infringes the '717 patent. Defendants have had knowledge that these actions induce end users of their web sites and mobile applications to directly infringe the asserted claims of the '717 patent since at least the filing and service of Skky's original complaint.

170. Using Defendants' web sites and mobile applications as intended and as instructed by Defendants, end users of Defendants' web sites and mobile applications, including but not limited to m.facebook.com and the Instagram mobile application, view, receive, transmit, and/or download compressed audio and/or visual files on their mobile devices. In so doing, these end users directly infringe the asserted claims of the '717 patent. By providing their web sites to

these end users, and by instructing and encouraging end users to access and use these web sites and mobile applications on their mobile devices, Defendants encourage and induce the infringement of the asserted claims of the '717 patent. Since at least the filing and service of Skky's original complaint, Defendants have had knowledge of the '717 patent and that end users of their web sites and mobile applications infringe the asserted claims of the '717 patent. Nevertheless, Defendants have continued to willingly, knowingly, and intentionally induce and encourage end users of their web sites and mobile applications to access these web sites and mobile applications in a manner that infringes the asserted claims of the '717 patent, as described above. Defendants have thus induced infringement of the '717 patent.

171. As an example, attached as Exhibit O is a preliminary and exemplary claim chart based only on publicly available information detailing one method of Defendants' infringement, directly and/or indirectly, of claims 1-6 of the '717 patent. This claim chart is not intended to be limiting in any way on Skky's right to modify this and any other claim chart or allege that other activities of Defendants infringe the '717 patent. Exhibit O is hereby incorporated by reference in its entirety. Each claim element in Exhibit O that is mapped to Facebook shall be considered an allegation within the meaning of the Federal Rules of Civil Procedure and therefore a response to each allegation is required. Plaintiff will consider a responsive element-by-element claim chart to be sufficient.

172. The infringement of the '717 patent injured and continues to harm Skky, and will cause irreparable injury and damage to Skky unless the Court enjoins Defendants from infringing the '717 patent.

173. Defendants' conduct in infringing the '717 patent renders this case exceptional within the meaning of 35 U.S.C. § 285.

COUNT V – PATENT INFRINGEMENT OF THE '718 PATENT

174. Plaintiff incorporates and realleges herein by reference paragraphs 1 - 173.

175. Defendants have had constructive notice of the '718 patent since it issued on September 1, 2015.

176. Defendants make, offer to sell, sell, use, distribute and service audio and/or visual files through their web sites and mobile applications, including, but not limited to m.facebook.com and the Instagram application, to cellular phones. These compressed audio and/or visual files are transmitted wirelessly to a cellular phone when a user accesses Defendants' web site(s) and/or mobile applications. Thus, Defendants' web site(s) and mobile applications containing audio and/or visual files, when used, practice the claimed inventions of the '718 patent.

177. Defendants have infringed and continue to infringe one or more claims of the '718 patent under 35 U.S.C. § 271(a), either literally or under the doctrine of equivalents, by making, using, selling, and/or offering for sale in the United States and/or importing into the United States products and or methods encompassed in at least claims 1-11 of the '718 patent, including, for example, by making, using,

selling, offering for sale, and/or importing compressed audio and/or visual files to cellular phones.

178. Third parties, collectively with Defendants, including Defendants' customers and those acting under Defendants' direction and control, have infringed, and continue to infringe, one or more claims of the '718 patent under 35 U.S.C. § 271(a), either literally or under the doctrine of equivalents, by making, using, selling, and/or offering for sale in the United State and/or importing into the United States products and/or methods encompassed in at least claims 1-11 of the '718 patent, including, for example, by making, using, selling, offering for sale, and/or importing compressed audio and/or visual files to cellular phones.

Defendants direct and control third parties related to the compression, storing, and/or transmission of compressed audio and/or visual files to cellular phones.

Defendants are the masterminds in the scheme to transmit compressed audio and/or visual files to cellular phones. On information and belief, Defendants may direct and control the action of third parties through contractual or agency relationships to make compressed audio and/or visual files. On information and belief, Defendants may direct and control third parties through contractual or agency relationships to store compressed audio and/or visual files. On information and belief, Defendants may direct and control third parties through contractual or agency relationships to transmit compressed audio and/or visual files to cellular phones. Defendants and third parties act in concert to provide compressed audio and/or visual files to the cellular phones of end users by compressing audio and/or

visual files, storing audio and/or visual files, and transmitting audio and/or visual files in a manner that performs the claimed methods of the '718 patent. Further, Defendants require that third parties perform steps of the patented method in order to receive payment or other benefit from Defendants. Defendants also require that their customers perform steps to the patented method in order to use their web site(s) and mobile application(s).

179. Defendants have induced infringement, and continue to induce infringement, of at least claims 1-11 of the '718 patent under 35 U.S.C. § 271(b). Defendants have had knowledge of the '718 patent and its infringement at least since the filing of the original Complaint, Dkt. No. 1. Defendants have induced infringement of the '718 patent by causing, urging, encouraging, aiding, or instructing third parties, such as Defendants' end users, to perform one or more of the claimed methods of the '718 patent such that the third parties directly infringe the claimed methods of the '718 patent. As intended by Defendants, users of Defendants' web site(s) and mobile applications access one of Defendants' web sites or mobile applications via a mobile device, and in so doing, transmit and/or receive audio and/or visual files, infringing the claims of the '718 patent. Defendants' web sites and mobile applications include m.facebook.com and the Instagram app as well as similar websites owned and/or operated by Defendants that transmit and/or receive audio and/or visual files.

180. For example, Defendants' web sites, m.facebook.com and www.instagram.com, make available numerous compressed audio and/or visual

files for download to a user's cellular phone that can be viewed on the cellular phone by the user. This necessarily requires that Defendants, acting with specific intent, to urge, instruct, encourage, or seek aid from such third parties to compress audio and/or visual files to a cellular phone. By continuing the representative aforementioned activities with knowledge of the '718 patent at least since the filing of the original Complaint, Dkt. No. 1, Defendants, acting with specific intent, know, that they are inducing infringement by causing the method steps of the '718 patent to be performed.

181. Defendants act with specific intent to induce third parties to infringe the '718 patent because Defendants seek to have compressed audio and/or visual files transmitted to cellular phones of end users. Defendants create and disseminate promotional and marketing material and offer instructions and/or technical information to encourage end users to seek transmission of compressed audio and/or visual files to cellular phones in a manner that infringes the '718 patent. By encouraging end users to seek transmission of compressed audio and/or visual files, Defendants specifically encourage and intend for third parties, either alone or in conjunction with Defendants, to compress, store, and/or transmit compressed audio and/or visual files to the cellular phones of the end users in a manner that infringes the '718 patent. Defendants have had knowledge that these actions induce end users of their web sites and mobile applications to directly infringe the asserted claims of the '718 patent since at least the filing and service of Skky's original complaint.

182. Using Defendants' web sites and mobile applications as intended and as instructed by Defendants, end users of Defendants' web sites and mobile applications, including but not limited to m.facebook.com and the Instagram mobile application, view, receive, transmit, and/or download compressed audio and/or visual files on their mobile devices. In so doing, these end users directly infringe the asserted claims of the '718 patent. By providing their web sites to these end users, and by instructing and encouraging end users to access and use these web sites and mobile applications on their mobile devices, Defendants encourage and induce the infringement of the asserted claims of the '718 patent. Since at least the filing and service of Skky's original complaint, Defendants have had knowledge of the '718 patent and that end users of their web sites and mobile applications infringe the asserted claims of the '718 patent. Nevertheless, Defendants have continued to willingly, knowingly, and intentionally induce and encourage end users of their web sites and mobile applications to access these web sites and mobile applications in a manner that infringes the asserted claims of the '718 patent, as described above. Defendants have thus induced infringement of the '718 patent.

183. As an example, attached as Exhibit P is a preliminary and exemplary claim chart based only on publicly available information detailing one method of Defendants' infringement, directly and/or indirectly, of claims 1-11 of the '718 patent. This claim chart is not intended to be limiting in any way on Skky's right to modify this and any other claim chart or allege that other activities of

Defendants infringe the '718 patent. Exhibit P is hereby incorporated by reference in its entirety. Each claim element in Exhibit P that is mapped to Facebook shall be considered an allegation within the meaning of the Federal Rules of Civil Procedure and therefore a response to each allegation is required. Plaintiff will consider a responsive element-by-element claim chart to be sufficient.

184. The infringement of the '718 patent injured and continues to harm Skky, and will cause irreparable injury and damage to Skky unless the Court enjoins Defendants from infringing the '718 patent.

185. Defendants' conduct in infringing the '718 patent renders this case exceptional within the meaning of 35 U.S.C. § 285.

COUNT VI – PATENT INFRINGEMENT OF THE '870 PATENT

186. Plaintiff incorporates and realleges herein by reference paragraphs 1 - 185.

187. Defendants have had constructive notice of the '870 patent since it issued on December 1, 2015.

188. Defendants make, offer to sell, sell, use, distribute and service audio and/or visual files through their web sites and mobile applications, including but not limited to m.facebook.com and the Instagram application, to cellular phones. These compressed audio and/or visual files are transmitted wirelessly to a cellular phone when a user accesses Defendants' web site(s) and/or mobile applications. Thus, Defendants' web site(s) and mobile applications containing audio and/or visual files, when used, practice the claimed inventions of the '870 patent.

189. Defendants have infringed and continue to infringe one or more claims of the '870 patent under 35 U.S.C. § 271(a), either literally or under the doctrine of equivalents, by making, using, selling, and/or offering for sale in the United States and/or importing into the United States products and or methods encompassed in at least claims 8 and 10-14 of the '870 patent, including, for example, by making, using, selling, offering for sale, and/or importing compressed audio and/or visual files to cellular phones.

190. Third parties, collectively with Defendants, including Defendants' customers and those acting under Defendants' direction and control, have infringed, and continue to infringe, one or more claims of the '870 patent under 35 U.S.C. § 271(a), either literally or under the doctrine of equivalents, by making, using, selling, and/or offering for sale in the United State and/or importing into the United States products and/or methods encompassed in at least claims 8 and 10-14 of the '870 patent, including, for example, by making, using, selling, offering for sale, and/or importing compressed audio and/or visual files to cellular phones. Defendants direct and control third parties related to the compression, storing, and/or transmission of compressed audio and/or visual files to cellular phones. Defendants are the masterminds in the scheme to transmit compressed audio and/or visual files to cellular phones. On information and belief, Defendants may direct and control the action of third parties through contractual or agency relationships to make compressed audio and/or visual files. On information and belief, Defendants may direct and control third parties through contractual or

agency relationships to store compressed audio and/or visual files. On information and belief, Defendants may direct and control third parties through contractual or agency relationships to transmit compressed audio and/or visual files to cellular phones. Defendants and third parties act in concert to provide compressed audio and/or visual files to the cellular phones of end users by compressing audio and/or visual files, storing audio and/or visual files, and transmitting audio and/or visual files in a manner that performs the claimed methods of the '870 patent. Further, Defendants require that third parties perform steps of the patented method in order to receive payment or other benefit from Defendants. Defendants also require that their customers perform steps to the patented method in order to use their web site(s) and mobile application(s).

191. Defendants have induced infringement, and continue to induce infringement, of at least claims 8 and 10-14 of the '870 patent under 35 U.S.C. § 271(b). Defendants have had knowledge of the '870 patent and its infringement at least since the filing of the original Complaint, Dkt. No. 1. Defendants have induced infringement of the '870 patent by causing, urging, encouraging, aiding, or instructing third parties, such as Defendants' end users, to perform one or more of the claimed methods of the '870 patent such that the third parties directly infringe the claimed methods of the '870 patent. As intended by Defendants, users of Defendants' web site(s) and mobile applications access one of Defendants' web sites or mobile applications via a mobile device, and in so doing, transmit and/or receive audio and/or visual files, infringing the claims of the '870 patent.

Defendants' web sites and mobile applications include m.facebook.com and the Instagram app as well as similar websites owned and/or operated by Defendants that transmit and/or receive audio and/or visual files.

192. For example, Defendants' web sites, m.facebook.com and www.instagram.com, make available numerous compressed audio and/or visual files for download to a user's cellular phone that can be viewed on the cellular phone by the user. This necessarily requires that Defendants, acting with specific intent, to urge, instruct, encourage, or seek aid from such third parties to compress audio and/or visual files to a cellular phone. By continuing the representative aforementioned activities with knowledge of the '870 patent at least since the filing of the original Complaint, Dkt. No. 1, Defendants, acting with specific intent, know, that they are inducing infringement by causing the method steps of the '870 patent to be performed.

193. Defendants act with specific intent to induce third parties to infringe the '870 patent because Defendants seek to have compressed audio and/or visual files transmitted to cellular phones of end users. Defendants create and disseminate promotional and marketing material and offer instructions and/or technical information to encourage end users to seek transmission of compressed audio and/or visual files to cellular phones in a manner that infringes the '870 patent. By encouraging end users to seek transmission of compressed audio and/or visual files, Defendants specifically encourage and intend for third parties, either alone or in conjunction with Defendants, to compress, store, and/or transmit compressed

audio and/or visual files to the cellular phones of the end users in a manner that infringes the '870 patent. Defendants have had knowledge that these actions induce end users of their web sites and mobile applications to directly infringe the asserted claims of the '870 patent since at least the filing and service of Skky's original complaint.

194. Using Defendants' web sites and mobile applications as intended and as instructed by Defendants, end users of Defendants' web sites and mobile applications, including but not limited to m.facebook.com and the Instagram mobile application, view, receive, transmit, and/or download compressed audio and/or visual files on their mobile devices. In so doing, these end users directly infringe the asserted claims of the '870 patent. By providing their web sites to these end users, and by instructing and encouraging end users to access and use these web sites and mobile applications on their mobile devices, Defendants encourage and induce the infringement of the asserted claims of the '870 patent. Since at least the filing and service of Skky's original complaint, Defendants have had knowledge of the '870 patent and that end users of their web sites and mobile applications infringe the asserted claims of the '870 patent. Nevertheless, Defendants have continued to willingly, knowingly, and intentionally induce and encourage end users of their web sites and mobile applications to access these web sites and mobile applications in a manner that infringes the asserted claims of the '870 patent, as described above. Defendants have thus induced infringement of the '870 patent.

195. As an example, attached as Exhibit Q is a preliminary and exemplary claim chart based only on publicly available information detailing one method of Defendants' infringement, directly and/or indirectly, of claims 8 and 10-14 of the '870 patent. This claim chart is not intended to be limiting in any way on Skky's right to modify this and any other claim chart or allege that other activities of Defendants infringe the '870 patent. Exhibit Q is hereby incorporated by reference in its entirety. Each claim element in Exhibit Q that is mapped to Facebook shall be considered an allegation within the meaning of the Federal Rules of Civil Procedure and therefore a response to each allegation is required. Plaintiff will consider a responsive element-by-element claim chart to be sufficient.
196. The infringement of the '870 patent injured and continues to harm Skky, and will cause irreparable injury and damage to Skky unless the Court enjoins Defendants from infringing the '870 patent.
197. Defendants' conduct in infringing the '870 patent renders this case exceptional within the meaning of 35 U.S.C. § 285.

COUNT VII – PATENT INFRINGEMENT OF THE '956 PATENT

198. Plaintiff incorporates and realleges herein by reference paragraphs 1 - 197.
199. Defendants have had constructive notice of the '956 patent since it issued on December 1, 2015.
200. Defendants make, offer to sell, sell, use, distribute and service audio and/or visual files through their web sites and mobile applications, including, but not limited to m.facebook.com and the Instagram application, to cellular phones.

These compressed audio and/or visual files are transmitted wirelessly to a cellular phone when a user accesses Defendants' web site(s) and/or mobile applications. Thus, Defendants' web site(s) and mobile applications containing audio and/or visual files, when used, practice the claimed inventions of the '956 patent.

201. Defendants have infringed and continue to infringe one or more claims of the '956 patent under 35 U.S.C. § 271(a), either literally or under the doctrine of equivalents, by making, using, selling, and/or offering for sale in the United States and/or importing into the United States products and or methods encompassed in at least claims 1-3 of the '956 patent, including, for example, by making, using, selling, offering for sale, and/or importing compressed audio and/or visual files to cellular phones.

202. Third parties, collectively with Defendants, including Defendants' customers and those acting under Defendants' direction and control, have infringed, and continue to infringe, one or more claims of the '956 patent under 35 U.S.C. § 271(a), either literally or under the doctrine of equivalents, by making, using, selling, and/or offering for sale in the United State and/or importing into the United States products and/or methods encompassed in at least claims 1-3 of the '956 patent, including, for example, by making, using, selling, offering for sale, and/or importing compressed audio and/or visual files to cellular phones.

Defendants direct and control third parties related to the compression, storing, and/or transmission of compressed audio and/or visual files to cellular phones.

Defendants are the masterminds in the scheme to transmit compressed audio

and/or visual files to cellular phones. On information and belief, Defendants may direct and control the action of third parties through contractual or agency relationships to make compressed audio and/or visual files. On information and belief, Defendants may direct and control third parties through contractual or agency relationships to store compressed audio and/or visual files. On information and belief, Defendants may direct and control third parties through contractual or agency relationships to transmit compressed audio and/or visual files to cellular phones. Defendants and third parties act in concert to provide compressed audio and/or visual files to the cellular phones of end users by compressing audio and/or visual files, storing audio and/or visual files, and transmitting audio and/or visual files in a manner that performs the claimed methods of the '956 patent. Further, Defendants require that third parties perform steps of the patented method in order to receive payment or other benefit from Defendants. Defendants also require that their customers perform steps to the patented method in order to use their web site(s) and mobile application(s).

203. Defendants have induced infringement, and continue to induce infringement, of at least claims 1-3 of the '956 patent under 35 U.S.C. § 271(b). Defendants have had knowledge of the '956 patent and its infringement at least since the filing of the original Complaint, Dkt. No. 1. Defendants have induced infringement of the '956 patent by causing, urging, encouraging, aiding, or instructing third parties, such as Defendants' end users, to perform one or more of the claimed methods of the '956 patent such that the third parties directly infringe the claimed

methods of the '956 patent. As intended by Defendants, users of Defendants' web site(s) and mobile applications access one of Defendants' web sites or mobile applications via a mobile device, and in so doing, transmit and/or receive audio and/or visual files, infringing the claims of the '956 patent. Defendants' web sites and mobile applications include m.facebook.com and the Instagram app as well as similar websites owned and/or operated by Defendants that transmit and/or receive audio and/or visual files.

204. For example, Defendants' web sites, m.facebook.com and www.instagram.com, make available numerous compressed audio and/or visual files for download to a user's cellular phone that can be viewed on the cellular phone by the user. This necessarily requires that Defendants, acting with specific intent, urge, instruct, encourage, or seek aid from such third parties to compress audio and/or visual files to a cellular phone. By continuing the representative aforementioned activities with knowledge of the '956 patent at least since the filing of the original Complaint, Dkt. No. 1, Defendants, acting with specific intent, know , that they are inducing infringement by causing the method steps of the '956 patent to be performed.

205. Defendants act with specific intent to induce third parties to infringe the '956 patent because Defendants seek to have compressed audio and/or visual files transmitted to cellular phones of end users. Defendants create and disseminate promotional and marketing material and offer instructions and/or technical information to encourage end users to seek transmission of compressed audio

and/or visual files to cellular phones in a manner that infringes the '956 patent. By encouraging end users to seek transmission of compressed audio and/or visual files, Defendants specifically encourage and intend for third parties, either alone or in conjunction with Defendants, to compress, store, and/or transmit compressed audio and/or visual files to the cellular phones of the end users in a manner that infringes the '956 patent. Defendants have had knowledge that these actions induce end users of their web sites and mobile applications to directly infringe the asserted claims of the '956 patent since at least the filing and service of Skky's original complaint.

206. Using Defendants' web sites and mobile applications as intended and as instructed by Defendants, end users of Defendants' web sites and mobile applications, including but not limited to m.facebook.com and the Instagram mobile application, view, receive, transmit, and/or download compressed audio and/or visual files on their mobile devices. In so doing, these end users directly infringe the asserted claims of the '956 patent. By providing their web sites to these end users, and by instructing and encouraging end users to access and use these web sites and mobile applications on their mobile devices, Defendants encourage and induce the infringement of the asserted claims of the '956 patent. Since at least the filing and service of Skky's original complaint, Defendants have had knowledge of the '956 patent and that end users of their web sites and mobile applications infringe the asserted claims of the '956 patent. Nevertheless, Defendants have continued to willingly, knowingly, and intentionally induce and

encourage end users of their web sites and mobile applications to access these web sites and mobile applications in a manner that infringes the asserted claims of the '956 patent, as described above. Defendants have thus induced infringement of the '956 patent.

207. As an example, attached as Exhibit R is a preliminary and exemplary claim chart based only on publicly available information detailing one method of Defendants' infringement, directly and/or indirectly, of claims 1-3 of the '956 patent. This claim chart is not intended to be limiting in any way on Skky's right to modify this and any other claim chart or allege that other activities of Defendants infringe the '956 patent. Exhibit R is hereby incorporated by reference in its entirety. Each claim element in Exhibit R that is mapped to Facebook shall be considered an allegation within the meaning of the Federal Rules of Civil Procedure and therefore a response to each allegation is required. Plaintiff will consider a responsive element-by-element claim chart to be sufficient.
208. The infringement of the '956 patent injured and continues to harm Skky, and will cause irreparable injury and damage to Skky unless the Court enjoins Defendants from infringing the '956 patent.
209. Defendants' conduct in infringing the '956 patent renders this case exceptional within the meaning of 35 U.S.C. § 285.

COUNT VIII – PATENT INFRINGEMENT OF THE '310 PATENT

210. Plaintiff incorporates and realleges herein by reference paragraphs 1 - 209.

211. Defendants have had constructive notice of the '310 patent since it issued on December 15, 2015.

212. Defendants make, offer to sell, sell, use, distribute and service audio and/or visual files through their web sites and mobile applications, including, but not limited to m.facebook.com and the Instagram application, to cellular phones. These compressed audio and/or visual files are transmitted wirelessly to a cellular phone when a user accesses Defendants' web site(s) and/or mobile applications. Thus, Defendants' web site(s) and mobile applications containing audio and/or visual files, when used, practice the claimed inventions of the '310 patent.

213. Defendants have infringed and continue to infringe one or more claims of the '310 patent under 35 U.S.C. § 271(a), either literally or under the doctrine of equivalents, by making, using, selling, and/or offering for sale in the United States and/or importing into the United States products and or methods encompassed in at least claims 1-3, 5, 7-13 of the '310 patent, including, for example, by making, using, selling, offering for sale, and/or importing compressed audio and/or visual files to cellular phones.

214. Third parties, collectively with Defendants, including Defendants' customers and those acting under Defendants' direction and control, have infringed, and continue to infringe, one or more claims of the '310 patent under 35 U.S.C. § 271(a), either literally or under the doctrine of equivalents, by making, using, selling, and/or offering for sale in the United State and/or importing into the United States products and/or methods encompassed in at least claims 1-3, 5, 7-13

of the '310 patent, including, for example, by making, using, selling, offering for sale, and/or importing compressed audio and/or visual files to cellular phones. Defendants direct and control third parties related to the compression, storing, and/or transmission of compressed audio and/or visual files to cellular phones. Defendants are the masterminds in the scheme to transmit compressed audio and/or visual files to cellular phones. On information and belief, Defendants may direct and control the action of third parties through contractual or agency relationships to make compressed audio and/or visual files. On information and belief, Defendants may direct and control third parties through contractual or agency relationships to store compressed audio and/or visual files. On information and belief, Defendants may direct and control third parties through contractual or agency relationships to transmit compressed audio and/or visual files to cellular phones. Defendants and third parties act in concert to provide compressed audio and/or visual files to the cellular phones of end users by compressing audio and/or visual files, storing audio and/or visual files, and transmitting audio and/or visual files in a manner that performs the claimed methods of the '310 patent. Further, Defendants require that third parties perform steps of the patented method in order to receive payment or other benefit from Defendants. Defendants also require that their customers perform steps to the patented method in order to use their web site(s) and mobile application(s).

215. Defendants have induced infringement, and continue to induce infringement, of at least claims 1-3, 5, 7-13 of the '310 patent under 35 U.S.C. § 271(b).

Defendants have had knowledge of the '310 patent and its infringement at least since the filing of the original Complaint, Dkt. No. 1. Defendants have induced infringement of the '310 patent by causing, urging, encouraging, aiding, or instructing third parties, such as Defendants' end users, to perform one or more of the claimed methods of the '310 patent such that the third parties directly infringe the claimed methods of the '310 patent. As intended by Defendants, users of Defendants' web site(s) and mobile applications access one of Defendants' web sites or mobile applications via a mobile device, and in so doing, transmit and/or receive audio and/or visual files, infringing the claims of the '310 patent. Defendants' web sites and mobile applications include m.facebook.com and the Instagram app as well as similar websites owned and/or operated by Defendants that transmit or receive audio and/or visual files.

216. For example, Defendants' web sites, m.facebook.com and www.instagram.com, make available numerous compressed audio and/or visual files for download to a user's cellular phone that can be viewed on the cellular phone by the user. This necessarily requires that Defendants, acting with specific intent, urge, instruct, encourage, or seek aid from such third parties to compress audio and/or visual files to a cellular phone. By continuing the representative aforementioned activities with knowledge of the '310 patent at least since the filing of the original Complaint, Dkt. No. 1, Defendants, acting with specific intent, know, that they are inducing infringement by causing the method steps of the '310 patent to be performed.

217. Defendants act with specific intent to induce third parties to infringe the '310 patent because Defendants seek to have compressed audio and/or visual files transmitted to cellular phones of end users. Defendants create and disseminate promotional and marketing material and offer instructions and/or technical information to encourage end users to seek transmission of compressed audio and/or visual files to cellular phones in a manner that infringes the '310 patent. By encouraging end users to seek transmission of compressed audio and/or visual files, Defendants specifically encourage and intend for third parties, either alone or in conjunction with Defendants, to compress, store, and/or transmit compressed audio and/or visual files to the cellular phones of the end users in a manner that infringes the '310 patent. Defendants have had knowledge that these actions induce end users of their web sites and mobile applications to directly infringe the asserted claims of the '310 patent since at least the filing and service of Skky's original complaint.

218. Using Defendants' web sites and mobile applications as intended and as instructed by Defendants, end users of Defendants' web sites and mobile applications, including but not limited to m.facebook.com and the Instagram mobile application, view, receive, transmit, and/or download compressed audio and/or visual files on their mobile devices. In so doing, these end users directly infringe the asserted claims of the '310 patent. By providing their web sites to these end users, and by instructing and encouraging end users to access and use these web sites and mobile applications on their mobile devices, Defendants

encourage and induce the infringement of the asserted claims of the '310 patent. Since at least the filing and service of Skky's original complaint, Defendants have had knowledge of the '310 patent and that end users of their web sites and mobile applications infringe the asserted claims of the '310 patent. Nevertheless, Defendants have continued to willingly, knowingly, and intentionally induce and encourage end users of their web sites and mobile applications to access these web sites and mobile applications in a manner that infringes the asserted claims of the '310 patent, as described above. Defendants have thus induced infringement of the '310 patent.

219. As an example, attached as Exhibit S is a preliminary and exemplary claim chart based only on publicly available information detailing one method of Defendants' infringement, directly or indirectly, of claims 1-3, 5, 7-13 of the '310 patent. This claim chart is not intended to be limiting in any way on Skky's right to modify this and any other claim chart or allege that other activities of Defendants infringe the '310 patent. Exhibit S is hereby incorporated by reference in its entirety. Each claim element in Exhibit S that is mapped to Facebook shall be considered an allegation within the meaning of the Federal Rules of Civil Procedure and therefore a response to each allegation is required. Plaintiff will consider a responsive element-by-element claim chart to be sufficient.

220. The infringement of the '310 patent injured and continues to harm Skky, and will cause irreparable injury and damage to Skky unless the Court enjoins Defendants from infringing the '310 patent.

221. Defendants' conduct in infringing the '310 patent renders this case exceptional within the meaning of 35 U.S.C. § 285.

COUNT IX – PATENT INFRINGEMENT OF THE '810 PATENT

222. Plaintiff incorporates and realleges herein by reference paragraphs 1 - 221.

223. Defendants have had constructive notice of the '810 patent since it issued on December 22, 2015.

224. Defendants make, offer to sell, sell, use, distribute and service audio and/or visual files through their web sites and mobile applications, including, but not limited to m.facebook.com and the Instagram application, to cellular phones. These compressed audio and/or visual files are transmitted wirelessly to a cellular phone when a user accesses Defendants' web site(s) and/or mobile applications. Thus, Defendants' web site(s) and mobile applications containing audio and/or visual files, when used, practice the claimed inventions of the '810 patent.

225. Defendants have infringed and continue to infringe one or more claims of the '810 patent under 35 U.S.C. § 271(a), either literally or under the doctrine of equivalents, by making, using, selling, and/or offering for sale in the United States and/or importing into the United States products and or methods encompassed in at least claims 1-5 of the '810 patent, including, for example, by making, using, selling, offering for sale, and/or importing compressed audio and/or visual files to cellular phones.

226. Third parties, collectively with Defendants, including Defendants' customers and those acting under Defendants' direction and control, have infringed, and

continue to infringe, one or more claims of the '810 patent under 35 U.S.C. § 271(a), either literally or under the doctrine of equivalents, by making, using, selling, and/or offering for sale in the United State and/or importing into the United States products and/or methods encompassed in at least claims 1-5 of the '810 patent, including, for example, by making, using, selling, offering for sale, and/or importing compressed audio and/or visual files to cellular phones.

Defendants direct and control third parties related to the compression, storing, and/or transmission of compressed audio and/or visual files to cellular phones.

Defendants are the masterminds in the scheme to transmit compressed audio and/or visual files to cellular phones. On information and belief, Defendants may direct and control the action of third parties through contractual or agency relationships to make compressed audio and/or visual files. On information and belief, Defendants may direct and control third parties through contractual or agency relationships to store compressed audio and/or visual files. On information and belief, Defendants may direct and control third parties through contractual or agency relationships to transmit compressed audio and/or visual files to cellular phones. Defendants and third parties act in concert to provide compressed audio and/or visual files to the cellular phones of end users by compressing audio and/or visual files, storing audio and/or visual files, and transmitting audio and/or visual files in a manner that performs the claimed methods of the '810 patent. Further, Defendants require that third parties perform steps of the patented method in order to receive payment or other benefit from Defendants. Defendants also require that

their customers perform steps to the patented method in order to use their web site(s) and mobile application(s).

227. Defendants have induced infringement, and continue to induce infringement, of at least claims 1-5 of the '810 patent under 35 U.S.C. § 271(b). Defendants have had knowledge of the '810 patent and its infringement at least since the filing of the original Complaint, Dkt. No. 1. Defendants have induced infringement of the '810 patent by causing, urging, encouraging, aiding, or instructing third parties, such as Defendants' end users, to perform one or more of the claimed methods of the '810 patent such that the third parties directly infringe the claimed methods of the '810 patent. As intended by Defendants, users of Defendants' web site(s) and mobile applications access one of Defendants' web sites or mobile applications via a mobile device, and in so doing, transmit and/or receive audio and/or visual files, infringing the claims of the '810 patent. Defendants' web sites and mobile applications include m.facebook.com and the Instagram app as well as similar websites owned and/or operated by Defendants that transmit and/or receive audio and/or visual files.

228. For example, Defendants' web sites, m.facebook.com and www.instagram.com, make available numerous compressed audio and/or visual files for download to a user's cellular phone that can be viewed on the cellular phone by the user. This necessarily requires that Defendants, acting with specific intent, urge, instruct, encourage, or seek aid from such third parties to compress audio and/or visual files to a cellular phone. By continuing the representative

aforementioned activities with knowledge of the '810 patent at least since the filing of the original Complaint, Dkt. No. 1, Defendants, acting with specific intent, know, that they are inducing infringement by causing the method steps of the '810 patent to be performed.

229. Defendants act with specific intent to induce third parties to infringe the '810 patent because Defendants seek to have compressed audio and/or visual files transmitted to cellular phones of end users. Defendants create and disseminate promotional and marketing material and offer instructions and/or technical information to encourage end users to seek transmission of compressed audio and/or visual files to cellular phones in a manner that infringes the '810 patent. By encouraging end users to seek transmission of compressed audio and/or visual files, Defendants specifically encourage and intend for third parties, either alone or in conjunction with Defendants, to compress, store, and/or transmit compressed audio and/or visual files to the cellular phones of the end users in a manner that infringes the '810 patent. Defendants have had knowledge that these actions induce end users of their web sites and mobile applications to directly infringe the asserted claims of the '810 patent since at least the filing and service of Skky's original complaint.

230. Using Defendants' web sites and mobile applications as intended and as instructed by Defendants, end users of Defendants' web sites and mobile applications, including but not limited to m.facebook.com and the Instagram mobile application, view, receive, transmit, and/or download compressed audio

and/or visual files on their mobile devices. In so doing, these end users directly infringe the asserted claims of the '810 patent. By providing their web sites to these end users, and by instructing and encouraging end users to access and use these web sites and mobile applications on their mobile devices, Defendants encourage and induce the infringement of the asserted claims of the '810 patent. Since at least the filing and service of Skky's original complaint, Defendants have had knowledge of the '810 patent and that end users of their web sites and mobile applications infringe the asserted claims of the '810 patent. Nevertheless, Defendants have continued to willingly, knowingly, and intentionally induce and encourage end users of their web sites and mobile applications to access these web sites and mobile applications in a manner that infringes the asserted claims of the '810 patent, as described above. Defendants have thus induced infringement of the '810 patent.

231. As an example, attached as Exhibit T is a preliminary and exemplary claim chart based only on publicly available information detailing one method of Defendants' infringement, directly and/or indirectly, of claims 1-5 of the '810 patent. This claim chart is not intended to be limiting in any way on Skky's right to modify this and any other claim chart or allege that other activities of Defendants infringe the '810 patent. Exhibit T is hereby incorporated by reference in its entirety. Each claim element in Exhibit T that is mapped to Facebook shall be considered an allegation within the meaning of the Federal Rules of Civil

Procedure and therefore a response to each allegation is required. Plaintiff will consider a responsive element-by-element claim chart to be sufficient.

232. The infringement of the '810 patent injured and continues to harm Skky, and will cause irreparable injury and damage to Skky unless the Court enjoins Defendants from infringing the '810 patent.

233. Defendants' conduct in infringing the '810 patent renders this case exceptional within the meaning of 35 U.S.C. § 285.

PRAYER FOR RELIEF

WHEREFORE, Skky prays for the following judgment and relief

a. that Defendants and their subsidiaries have infringed the '465, '502, '693, '717, '718, '870, '956, '310 and '810 patents;

b. that Skky is entitled to a permanent injunction barring Defendants, their subsidiaries, and their respective agents, servants, officers, directors, employees, and all persons acting in concert with them, directly or indirectly, from infringing, inducing others to infringe, or contributing to the infringement of the '465, '502, '693, '717, '718, '870, '956, '310 and '810 patents;

c. that Defendants shall account for and pay to Skky the damages to which Skky is entitled as a consequence of Defendants' and their subsidiaries' infringement of the '465, '502, '693, '717, '718, '870, '956, '310 and '810 patents;

d. that Defendants and their subsidiaries shall additionally account for and pay to Skky the damages for the period of infringement of the '465, '502, '693, '717, '718, '870, '956, '310 and '810 patents following the period of damages established by Skky at trial;

- e. that Skky is further entitled to pre-judgment and post-judgment interest;
- g. that this case is exceptional and that Skky is entitled to their reasonable attorney fees, costs, and expenses that it incurs prosecuting this action under 35 U.S.C. § 285; and
- h. any other award or relief that is just and equitable.

DEMAND FOR JURY TRIAL

A jury trial is demanded on all issues so triable, pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Dated: May 19, 2016

Respectfully submitted,

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