**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF TEXAS**
**DALLAS DIVISION**

| | |
|---|---|
| **SUMMIT 6 LLC**<br><br>      **Plaintiff,**<br><br>  **v.**<br><br>**RESEARCH IN MOTION CORP.,**<br>**RESEARCH IN MOTION LIMITED**<br>**SAMSUNG ELECTRONICS CO. LTD.,**<br>**SAMSUNG TELECOMMUNICATIONS**<br>**AMERICA LLC, MULTIPLY INC.,**<br>**FACEBOOK, INC., AND**<br>**PHOTOBUCKET CORP.,**<br><br>      **Defendants.** | **CIVIL ACTION NO. 3:11-CV-00367-O** |

**EXPERT REPORT OF DR. V. THOMAS RHYNE**

**REGARDING THE INVALIDITY OF THE ASSERTED CLAIMS OF**

**U.S. PATENT NOS. 6,895,557 AND 7,765,482**

**EXPERT REPORT OF DR. V. THOMAS RHYNE CONCERNING THE INVALIDITY OF THE ASSERTED CLAIMS OF U.S. PATENTS NOS. 6,895,557 AND 7,765,482**

## 1. INTRODUCTION

1. In this litigation Plaintiff Summit 6 LLC ("Summit 6") has asserted that defendants infringe various claims of U.S. Patents Nos. 6,895,557 ("the '557 patent") and 7,765,482 ("the '482 patent") which are both now assigned to Summit 6. This expert report addresses the claims being asserted against defendants Samsung Electronics Co. Ltd. and Samsung Telecommunications America LLC (collectively "Samsung") and Facebook, Inc. ("Facebook") (collectively "Defendants").

### 1.1 Retention

2. I have been retained as an independent technical expert by Defendants Facebook and Samsung in this litigation. I am being paid for my work in this litigation at the rate of $650 per hour. My compensation does not depend on the outcome of this litigation. I have no personal interest in that outcome. My opinions and conclusions and other matters on which I expect to testify at trial are set forth below.

3. This expert report describes the testimony that I am likely to present regarding the technical subject matter described in the '557 and '482 patents, as well as what was known in the relevant art at the priority dates of those patents. I may provide a tutorial or demonstration regarding the issues raised in this expert report, and may also provide oral testimony regarding my knowledge and expert opinions at trial. I anticipate that I may be called to testify regarding the issues discussed in this expert report, the exhibits to it and the materials I have considered in formulating my opinions. I also expect that I may be called to testify in a tutorial role regarding the prior art and general technical concepts relevant to the issues in this suit based on my education, experience, and expertise in those areas.

4. I have prepared this expert report based on my independent evaluation and analysis. This expert report also sets forth my conclusions based on my analysis and research to date. I respectfully reserve the right to supplement the opinions set forth in this report, however, whether through a supplemental expert report, or through testimony at trial. I also respectfully

reserve the right to respond, either through a supplemental expert report or at trial, to any reports, testimony, other evidence or argument that Summit 6 may serve, or depositions of Summit 6 witnesses or third parties that are scheduled but have yet to take place, including the depositions of Peter Yoakum, Scott Wilson, Laban Jackson, and Point2.

5.      I understand that the Court has construed the asserted claims of the '557 and '482 patents ("Claim Construction"). I have applied the Claim Constructions in this expert report. In addition, I have reviewed Summit 6's June 10, 2012 Final Infringement Contentions ("Infringement Contentions") against Facebook and Samsung, and in preparing this expert report I have also considered the scope of the claims being asserted by Summit 6, as that scope is reflected in the Infringement Contentions, although this should not be taken as suggesting that I agree with Summit 6's Infringement Contentions. I have also considered all of the material listed in **Exhibit B.**

**1.2      The Asserted Claims**

6.      According to the cover pleading of Plaintiff Summit 6's June 20, 2012 Local Patent Rule Disclosures, Summit 6 asserts the following claims against the Defendants identified in the preceding paragraph:
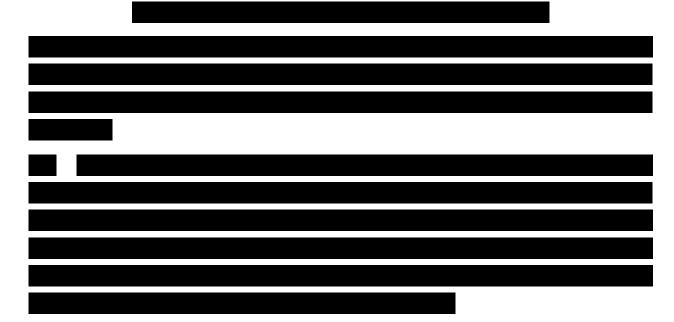
| DEFENDANT | CLAIMS |
|---|---|
| Facebook | **'557 Patent:** 1, 2, 4, 5, 7, 10, 11, 14, 28, 29, 31, 33, 34, 45, 46, 47, 49, 50, 51, 52, 53, 55, 56, 57, 58, 59, 60, 61, 62, 64, 65, 66, 67, 68, 70, 71, 72, 73, and 74.<br><br>**'482 Patent:** 1, 4, 5, 6, 7, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 30, 34, 35, 36, 37, 38, 40, 41, 42, 44, 45, 46, 47, 49, and 51. |
| Samsung | **'482 Patent:** 1, 6, 8, 9, 10, 13, 14, 16, 17, 18, 19, 22, 23, 38, 40, 41, 42, 44, 45, 46, and 49. |

7.     I refer to the claims being asserted by Summit 6 for each of their two patents as the "Asserted '557 Claims" and the "Asserted '482 Claims." I refer to those two sets of claims collectively as the "Asserted Summit 6 Claims."

## 1.3     The Scope of this Expert Report

8.     For this expert report I have been asked to compare the scope of the Asserted Summit 6 Claims to a number of prior patents, other references and products, and as a result of that comparison, to determine whether or not that prior art invalidates those claims. This expert report provides the opinions of invalidity which I have formed as a result of that comparison, as well as the bases for those opinions.

### 4.1.3 The Mattes Patent

106.    Heinz Mattes, U.S. Patent No. 6,038,295 ("Mattes") was filed Jun. 17, 1997 and issued Mar. 14, 2000.  Mattes is entitled "Apparatus and Method for Recording, Communicating and Administering Digital Images."  Mattes is therefore prior art under 35 U.S.C. § 102(e).  I note that Mattes was not considered by the PTO during the prosecution of the '557 or '482 patents and, based on my comparison of Mattes to the prior art before the PTO during the prosecution of the '557 and '482 patents, is not cumulative.

107.    Mattes describes a "communications system for recording and administering" data using a "telephone unit" consisting of a "digital image pick up unit," a "telephone memory," and a "processor."  (Mattes 2:5-10).  The Mattes digital image pick up unit, which is essentially a digital camera, captures digital images and stores them in the telephone memory.  (Mattes 6:1-5).  Using the processor, the telephone unit then reduces the size of the stored images using the JPEG image compression algorithm.  (Mattes 6:5-9).  The compressed images are subsequently transmitted from the telephone unit to a server.  (Mattes 7:61-64).  After receiving the compressed image, Mattes discloses that the server could subsequently make the uploaded image available on a web page.  (Mattes 8:28-35).

108.    Mattes also discloses that the image quality of the uploaded photos varies based on the requirements of the destination server.  (Mattes 4:18-37).  Like the system described in the asserted patents, the Mattes systems ensures those requirements are satisfied without any user involvement.  (Mattes 4:18-37)  The Mattes telephone unit and server perform a handshake to

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