

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION**

EXPRESS MOBILE, INC.,

*Plaintiff,*

v.

GOOGLE, LLC,

*Defendant.*

Case No. 6:20-cv-00804-ADA

Jury Trial Demanded

**PLAINTIFF EXPRESS MOBILE, INC.'S PRELIMINARY INFRINGEMENT  
CONTENTIONS AND IDENTIFICATION OF PRIORITY DATES**

Plaintiff Express Mobile, Inc. (“Plaintiff” or “Express Mobile”) serves its preliminary infringement contentions and identification of priority dates (“Disclosure”) on Defendant Google, LLC (“Defendant” or “Google”), (regarding U.S. Patent No. 6,546,397 (the “’397 Patent”), U.S. Patent No. 7,594,168 (the “’168 Patent”), U.S. Patent No. 9,928,044 (the “’044 Patent”), U.S. Patent No. 9,471,287 (the “’287 Patent”) and U.S. Patent No. 9,063,755 (the “’755 Patent”) (collectively, the “patents-in-suit”).

Express Mobile bases this Disclosure on its current knowledge, understanding, and belief as to the facts and information available as of the date of this Disclosures. Express Mobile has not yet completed its investigation, collection of information, discovery, or analysis relating to this action, and additional discovery, including discovery from Google and third parties, may lead Express Mobile to amend, revise, and/or supplement this Disclosure. Express Mobile specifically reserves the right to amend, revise and/or supplement this Disclosure and/or accompanying exhibits in accordance with any Orders of record in this matter, and Federal Rule of Civil Procedure 26(e), as additional documents and information become available and investigation proceed. Express Mobile further reserves the right to amend its Preliminary

Infringement Contentions, including the claims asserted, based on any proceeding(s) before the United States Patent and Trademark Office, if any, regarding any Express Mobile patent.

Express Mobile reserves the right to supplement, modify or amend this Disclosure to include additional products or services made, used, sold, or offered for sale in or imported into the United States by Google.

This Disclosure is made without prejudice to any position Express Mobile may take with respect to claim construction. Express Mobile reserves its right to supplement this Disclosure and exhibits based on the Court's claim construction. Express Mobile further reserves the right to introduce and use such supplemental materials at trial.

The information in this Disclosure is not an admission regarding the scope of any claims or the proper construction of those claims or any claims contained therein. The production of documents accompanying this Disclosure is not an admission that such documents are admissible and Express Mobile does not waive any objections regarding admissibility. Express Mobile reserves the right to supplement its production of documents accompanying this disclosure upon identification or receipt of additional documents, including documents from third parties.

## **I. PRELIMINARY INFRINGEMENT CONTENTIONS**

Express Mobile's preliminary infringement contentions are attached hereto as Exhibits A1-E11. At this stage, Express Mobile provides charts for the following claims of the Asserted Patents:

- '397 patent on Google Docs, Google Slides, Google Sheets, Google Forms, Google Drive, Google Gmail, Google Sites, Google Surveys (and Surveys 360), Google Data Studio, Google Analytics (and Analytics 360), and Google Ads: claim 1 (Exhibits A1-A11)
- '168 patent on Google Slides: claims 1 and 6 (Exhibit B)

- ‘755 patent on Google Docs, Google Slides, Google Sheets, Google Forms, Google Drive, Google Gmail, Google Sites, Google Surveys (and Surveys 360), Google Data Studio, Google Analytics (and Analytics 360), and Google Ads: claims 1, 2, 7, and 11 (Exhibits C1-C11)
- ‘287 patent on Google Docs, Google Slides, Google Sheets, Google Forms, Google Drive, Google Gmail, Google Sites, Google Surveys (and Surveys 360), Google Data Studio, Google Analytics (and Analytics 360), and Google Ads: claims 1, 2, 7, and 11 (Exhibits D1-D11)
- ‘044 patent on Google Docs, Google Slides, Google Sheets, Google Forms, Google Drive, Google Gmail, Google Sites, Google Surveys (and Surveys 360), Google Data Studio, Google Analytics (and Analytics 360), and Google Ads: claims 1, 2, 7, and 11 (Exhibits E1-E11)

## **II. PRELIMINARY IDENTIFICATION OF THE PRIORITY DATE FOR EACH CLAIM OF THE ASSERTED PATENTS**

Based on currently available information, Express Mobile identifies that the inventions of the ‘397 and ‘168 Patents were conceived by Steve Rempell at least as early as April 1999. Express Mobile further identifies that the inventions of the ‘397 and ‘168 Patents were reduced to practice by Steve Rempell at least as early as June 1999. Steve Rempell diligently worked to reduce the inventions of the ‘397 and ‘168 Patents to practice, including through source code development. Thus, each of the asserted claims of the ‘397 and ‘168 Patents are entitled to a priority date of at least as early as April 1999.

Based on currently available information, Express Mobile identifies that the inventions of the ‘755, ‘287, and ‘044 Patents were conceived by inventors Steve Rempell, David Chrobak, and Ken Brown at least as early as January 12, 2008. Express Mobile further identifies that the inventions of the ‘755, ‘287, and ‘044 Patents were reduced to practice thereafter by at least as early as November 11, 2008. For example, Express Mobile identifies provisional patent

application No. 61/113,471, filed on November 11, 2008, as relevant to and supportive of the work related to the identified reduction to practice at least as early as November 11, 2008. Express Mobile further identifies that Steve Rempell, Ken Brown, and Dave Chrobak diligently worked to reduce the inventions of the '755, '287, and '044 Patents to practice, including through source code and other technical development. Thus, each of the asserted claims of the '755, '287, and '044 Patents are entitled to a priority date of at least as early as January 12, 2008. Alternatively, Express Mobile identifies that each of the asserted claims of the '755, '287, and '044 Patents are entitled to a priority date of at least as early as November 11, 2008, which is the filing date of provisional patent application No. 61/113,471.

Express Mobile's investigation relating to the conception and reduction to practice of the patented inventions is ongoing and it therefore reserves the right to supplement and/or modify this date as discovery in this case continues.

### **III. DOCUMENT PRODUCTION ACCOMPANYING PRELIMINARY INFRINGEMENT CONTENTIONS**

Subject to ongoing investigation and based on available information to date, non-privileged documents due with these Preliminary Infringement Contentions, including at least documents within Express Mobile's possession, custody, and/or control evidencing conception and reduction to practice for each claimed invention and a copy of the file history for each Patent-in-Suit, have been produced or are being produced. Express Mobile reserves the right to supplement its production and its identification of documents as additional discovery is conducted, including but not limited to third-party discovery evidencing conception and reduction to practice that may be produced in the ordinary course of these proceedings.

Express Mobile identifies XMO\_0000001 – XMO\_00000343 as being copies of the Patents-in-Suit.

Express Mobile identifies XMO\_00000344 – XMO\_00003581 as being copies of the file histories for the Patents-in-Suit.

As to the '397 and '168 patents, Express Mobile identifies XMO\_00003614 – XMO\_00006203 as evidencing the conception, reduction to practice, design, and development of each claimed invention.

As to the '755, '287, and '044 patents, Express Mobile identifies XMO\_00006204 – XMO\_00006543, XMO\_00006544 – XMO\_00006848, BROWN0000320 – BROWN0000401, BROWN0000587 – BROWN0001219, BROWN0005492 – BROWN0005524, BROWN0006788 – BROWN0006813, BROWN0007406 – BROWN0007416, BROWN0007419 – BROWN0007420, BROWN0007613 – BROWN0007637, BROWN0008370 – BROWN0008591, BROWN0010534 – BROWN0010567, BROWN0010597 – BROWN0014509 as evidencing the conception, reduction to practice, design, and development of each claimed invention.

Dated: February 5, 2021

/s/ Robert F. Kramer

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