

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
WACO DIVISION

EXPRESS MOBILE, INC.,

*Plaintiff,*

v.

FACEBOOK INC.,

*Defendant.*

Case No. 6:20-cv-803

**JURY TRIAL DEMANDED**

**COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Express Mobile, Inc. (“Express Mobile” or “Plaintiff”), by its attorneys, demands a trial by jury on all issues so triable and for its Complaint against Facebook Inc. (“Facebook” or “Defendant”) alleges the following:

**NATURE OF THE ACTION**

1. This action arises under 35 U.S.C. § 271 for Facebook’s infringement of Express Mobile’s United States Patent Nos. 6,546,397 (“the ’397 patent”), 7,594,168 (“the ’168 patent”), 9,928,044 (“the ’044 patent”), 9,471,287 (“the ’287 patent”) and 9,063,755 (“the ’755 patent”).

**THE PARTIES**

2. Plaintiff Express Mobile, Inc. is an inventor-owned corporation organized under the laws of the State of Delaware with a place of business at 38 Washington Street, Novato, California 94947.

3. Upon information and belief, Facebook Inc. is a corporation organized and existing under the laws of the State of Delaware, with places of business at 300 W 6th Street, Austin,

Texas, 78701 and 607 W 3rd Street, Austin, Texas 78701. Facebook may be served through its registered agent for service at CSC - Lawyers Incorporating Service California, 2710 Gateway Oaks Drive Ste 150N, Sacramento, California 95833.

4. Facebook provides technologies that give people the power to connect with friends and family, find communities and grow businesses.

#### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. Jurisdiction and venue for this action are proper in the Western District of Texas.

7. This Court has personal jurisdiction over Facebook because Facebook has purposefully availed itself of the rights and benefits of the laws of this State and this Judicial District. Facebook resides in the Western District of Texas by maintaining regular and established places of business at 300 W 6th Street, Austin, Texas, 78701 and 607 W 3rd Street, Austin, Texas 78701.

8. This Court also has personal jurisdiction over Facebook because Facebook has done and is doing substantial business in this Judicial District, both generally and, upon information and belief, with respect to the allegations in this Complaint, including Facebook's one or more acts of infringement in this Judicial District.

9. Venue is proper in this Judicial District under 28 U.S.C. §§ 1391(b) and (c) and § 1400(b). Facebook has committed acts of infringement through, for example, performing a method to allow users to produce Internet websites in the Western District of Texas and has regular and established places of business in this District. Facebook's offices in Austin are physical places in the District, they are established locations where Facebook's business has been carried out for several years, and Facebook publicly advertises its presence in the District.

**THE PATENTS-IN-SUIT**

10. Express Mobile is the lawful owner of all rights, title, and interest in the '397 patent titled "Browser Based Web Site Generation Tool and Run Time Engine," including the right to sue and to recover for infringement thereof. The '397 patent was duly and legally issued on April 8, 2003, naming Steven H. Rempell as the inventor. A true and correct copy of the '397 patent is attached as Exhibit A.

11. The inventions of the '397 patent solve technical problems related to website creation and generation. For example, the inventions enable the creation of websites through browser-based visual editing tools such as selectable settings panels which describe website elements, with one or more settings corresponding to commands. These features are exclusively implemented utilizing computer technology including a virtual machine.

12. The claims of the '397 patent do not merely recite the performance of some pre-Internet business practice on the Internet. Instead, the claims of the '397 patent recite inventive concepts that are rooted in computerized website creation technology, and overcome problems specifically arising in the realm of computerized website creation technologies.

13. The claims of the '397 patent recite inventions that are not merely the routine or conventional use of website creation systems and methods. Instead, the inventions teach a browser-based website creation system and method in which the user-selected settings representing website elements are stored in a database, and in which said stored information is retrieved to generate said website.

14. The technology claimed in the '397 patent does not preempt all ways of using website or web page authoring tools nor any other well-known prior art technology.

15. Accordingly, each claim of the '397 patent recites a combination of elements sufficient to ensure that the claim amounts to significantly more than a patent on an ineligible concept.

16. Plaintiff is the lawful owner of all rights, title, and interest in United States Patent No. 7,594,168 titled "Browser Based Web Site Generation Tool and Run Time Engine," including the right to sue and to recover for infringement thereof. The '168 patent was duly and legally issued on September 22, 2009, naming Steven H. Rempell as the inventor. A true and correct copy of the '168 patent is attached as Exhibit B.

17. The inventions of the '168 patent solve technical problems related to website creation and generation. For example, the inventions enable the creation of websites through browser-based build tools and a user interface. The inventions greatly improve the productivity of the designer utilizing an innovative implementation for styles. These features are implemented utilizing computer technology.

18. The claims of the '168 patent do not merely recite the performance of some pre-Internet business practice on the Internet. Instead, the claims of the '168 patent recite inventive concepts that are rooted in computerized website creation technology and overcome problems specifically arising in the realm of computerized website creation technologies.

19. The claims of the '168 patent recite inventions that are not merely the routine or conventional use of website creation systems and methods. Instead, the inventions teach a browser-based website creation system including a server comprising a build engine configured to create and apply styles to, for example, a website with web pages comprised of objects.

20. The technology claimed in the '168 patent does not preempt all ways of using website or webpage authoring tools nor any other well-known or prior art technology.

21. Accordingly, each claim of the '168 patent recites a combination of elements sufficient to ensure that the claim amounts to significantly more than a patent on an ineligible concept.

22. In *Express Mobile v. KTree Computer Solutions*, a case filed in the Eastern District of Texas, the defendant, KTree Computer Solutions, brought a Motion for Judgment on the Pleadings asserting that the '397 patent and the '168 patent are invalid as claiming abstract subject matter under 35 U.S.C. § 101. (C.A. 2:17-00128; Dkt. 9, 17, 22-27). The briefing associated with the motion is incorporated by reference into this Complaint.

23. After considering the respective pleadings, Magistrate Judge Payne recommended denial of KTree's motion, without prejudice, holding that "the claims appear to address a problem particular to the internet: dynamically generating websites and displaying web pages based on stored user-selected settings" and further stating "the asserted claims do not bear all of the hallmarks of claims that have been invalidated on the pleadings by other courts in the past. For example, the claims are not merely do-it-on-a-computer claims." (Dkt. 29, attached as Exhibit C.) No objection was filed to the Magistrate Judge's report and recommendation and the decision therefore became final.

24. In *Express Mobile v. Pantheon Systems, Inc.*, a case filed in the Northern District of California, the defendant, Pantheon Systems, Inc., brought a Motion to Dismiss Plaintiff's First Amended Complaint asserting that the '397 patent and the '168 patent were directed to the abstract idea of creating and displaying webpages based upon information from a user with no further inventive concept and purportedly ineligible for patenting under 35 U.S.C. § 101. (Case No. 3:18-CV-04688-RS; Dkt. 26, 32 and 34). The briefing associated with the motion is incorporated by reference into this Complaint.

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