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11 Troy K Javaher

12  
13 **IN THE UNITED STATES DISTRICT COURT**  
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 FRANK M. WEYER and  
16 TROY K. JAVAHER,  
17  
18 Plaintiffs,

19 v.

20 MYSPACE, INC., a Delaware  
21 Corporation, and FACEBOOK,  
22 INC., a Delaware Corporation,  
23 Defendants.

Civil Action No.  
CV 10-00499 MRP (FFMx)

**PLAINTIFFS' MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT OF MOTION FOR  
SUMMARY ADJUDICATION OF  
PATENT INFRINGEMENT BY  
DEFENDANTS MYSPACE, INC. AND  
FACEBOOK, INC.**

Date: October 25, 2010

Time: 11:00 A.M.

Ctrm: 12

Judge: Hon. Mariana R. Pfaelzer

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Pursuant to FRCP 56(a), FRCP 65, and 35 U.S.C. §§ 271 and 283, Plaintiffs  
3 Frank Weyer and Troy Javaher (“Plaintiffs”), move for summary adjudication of  
4 patent infringement against Myspace, Inc. (“Myspace”) and Facebook, Inc.  
5 (“Facebook”) for their unauthorized practice of the exclusive rights granted to  
6 Plaintiffs under U.S. Patent No. 7.644,122 which issued January 5, 2010 (“the ‘122  
7 patent”). Exh. 1.<sup>1</sup>

8 **I. INTRODUCTION**

9 This action is a straightforward action for patent infringement. The patent at  
10 issue is U.S. Patent No. 7.644,122 which issued January 5, 2010 (“the ‘122 patent”).  
11 The patent covers a specific method for providing internet home pages for members of  
12 a group. The method includes storing information about a member, associating the  
13 member’s home page with an individual URL, and including on a member’s home  
14 page data about the member and separate controls for sending a message to the  
15 member and for submitting a comment about the member. As shown in detail below,  
16 Myspace and Facebook each practice the patented invention by providing home pages  
17 for its members that include the features required by the patent claims. The ‘122  
18 patent has a single independent claim and fourteen dependent claims. Plaintiffs are  
19 moving for summary adjudication of infringement by each of Myspace and Facebook  
20 of claims 1, 2, 3, 8, 9 and 12.

21  
22 **II. THE SUMMARY ADJUDICATION STANDARD**

23 A party is entitled to summary adjudication of a claim or defense if the  
24 evidence establishes that there is no genuine dispute as to the material facts. FRCP  
25 56(c). Plaintiffs, as the moving parties, bear the initial burden of establishing the  
26 absence of a genuine dispute. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256  
27

28 <sup>1</sup> The Exhibits are attached to the Declaration of Frank Weyer (“Weyer Decl.”)  
filed concurrently herewith.

1 (1986). Once that initial burden is met, the burden shifts to the opposing party,  
2 Myspace, to establish a triable issue of material fact with “significant probative  
3 evidence”. Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986); C.A.R. Transp.  
4 Brokerage Co., Inc. v. Darden Rest., Inc., 213 F.3d 474, 480 (9<sup>th</sup> Cir. 2000).

5 If all the admissible evidence submitted establishes that no reasonable trier of  
6 fact could find in favor of the opposing party, summary adjudication of issues is  
7 proper. Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587  
8 (1986).

9  
10 **III. MYSPACE AND FACEBOOK DIRECTLY INFRINGE THE ‘122**  
11 **PATENT BY PRACTICING THE PATENTED METHOD OF THE ‘122**  
12 **PATENT.**

13 A patent owner has the exclusive right to practice the patented invention. 35  
14 U.S.C. § 154(a)(1). Anyone who practices that patented invention without the  
15 authorization of the patent owner directly infringes the patent, and: (1) is liable for  
16 damages; and (2) is subject to being enjoined from further infringement. 35 U.S.C. §§  
17 271(a) and 283-285.

18 Determining Myspace and Facebook’s infringement of the ‘122 patent involves  
19 interpreting the meaning of the claims and determining whether Myspace and  
20 Facebook perform the method steps set forth in the claims. See e.g. Elbex Video,  
21 Ltd. v. Sensormatic Electronics Corp., 508 F.3d 1366, 1370 (Fed. Cir. 2007). The  
22 Court is not required to separately interpret every term or phrase in a patent claim,  
23 especially in situations where the meaning of a claim term or phrase is “readily  
24 apparent.” Phillips v. AWH Corp., 415 F.3d 1303, 1312-1313 (Fed. Cir. 2005) (*en*  
25 *banc*). There is a strong presumption that claim terms have their ordinary and  
26 customary meaning to one of ordinary skill in the art. Elbex at 1371.

27 Thus, to determine infringement in this case, the facts are applied to the claims  
28

1 as interpreted to determine whether Myspace and Facebook perform each of the  
2 steps set forth in the claims at issue. Elbex Video, 508 F.3d at 1370. As  
3 demonstrated herein, Myspace and Facebook each infringe the ‘122 patent by  
4 performing each of the method steps set forth in claims 1, 2, 3, 8, 9 and 12, as those  
5 claims are interpreted using the readily apparent, ordinary and customary meaning of  
6 each claim term.

7 **A. Introduction to the Patented Method of Claim 1 of the ‘122 Patent**

8 Claim 1<sup>2</sup> of the ‘122 patent claims a **“method for providing individual online**  
9 **presences for each of a plurality of members of a group of members.”** (Exh. 1,  
10 pg. 25, col. 13, lines 62-65). As explained in the patent specification, “the term  
11 ‘internet presence’ refers to an internet e-mail address and/or website, or other means  
12 for receiving or sending communications via the internet.” (Exh. 1, pg. 19, col. 1, line  
13 65 to col. 2, line 1). The term “members of a group of members” means “members of  
14 any group for which the invention has been implemented.” (Exh. 1, pg. 20, col. 3,  
15 lines 21-22). The term “plurality” is a well known term of art used in patents which  
16 means “two or more.” Thus, claim 1 claims a method for providing and internet  
17 address and/or website for two or more members of a group of members for whom the  
18 invention has been implemented. For Myspace, a group of members for which the  
19 invention has been implemented is members who sign-up with Myspace. For  
20 Facebook, a group of members for which the invention has been implemented is  
21 members who sign up with Facebook. According to news reports Myspace has about  
22 125,000,000 members and Facebook has over 500,000,000. (Exhs. 19-20).

23 The method as claimed in claims 1, 2, 3, 8, 9 and 12 includes specific method  
24 steps performed by certain apparatus. The apparatus recited in claims 1, 2, 3, 8, 9 and  
25 12 includes an **“interface server computer”** and a **“database system”** connected to  
26

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27 <sup>2</sup> Claim 1 is the only independent claim of the ‘122 patent. Claims 2, 3, 8, 9 and 12  
28 are dependent on claim 1. That is, they include all of the claim elements of claim 1,  
plus the additional claim elements added by each respective dependent claim.

1 the interface server computer. (Exh. 1, pg. 25, col. 13, line 62 to col. 14, line 54).

2 As explained in the patent specification, the “Interface server 110 provides an  
3 interface to user computer 100 (for example in the form of one or more web pages)  
4 that allows the user to select the intended recipient and specify the form of  
5 communication the user would like to use (e.g. sending an e-mail message or visiting  
6 the recipient's website).” (Exh. 1, pg. 20, col. 3, lines 48-53). Further, “interface  
7 server 110 may be implemented as a dedicated server computer, a virtual server  
8 hosted by an internet service provider (“ISP”), as a system of multiple interconnected  
9 computers, or may be implemented in any other appropriate manner. (Exh. 1, pg. 20,  
10 col. 3, lines 44-48). The interface server computer can be accessed by specifying its  
11 “URL<sup>3</sup>.” For the example embodiments described in the patent specification, the  
12 URL’s for the interface server computer are “www.everymd.com” and  
13 “www.interfaceserver.com”. (Exh. 1, pg. 20, col. 4, lines 33-39). The URL’s for  
14 Myspace’s and Facebook’s interface server computers are “www.myspace.com” and  
15 “www.facebook.com”, respectively. (Weyer Decl. ¶¶ 8 and 12).

16 With respect to the claimed “data base system”, as explained in the patent  
17 specification, “Data base 115 may be directly connected to interface server 110, or  
18 may be connected to interface server 110 by the internet or by any other network or  
19 other telecommunications means. Data base 115 may comprise a data base server  
20 system, data base files accessible by a data base manager program, or any other form  
21 of data base system.” (Exh. 1, pg. 20, col. 3, lines 59-61). Further, “Data base 115  
22 may be directly connected to interface server 110, or may be connected to interface  
23 server 110 by the internet or by any other network or other telecommunications  
24 means.” (Exh. 1, pg. 20, col. 3, lines 56-59). Finally, data base 115 need not

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25  
26 <sup>3</sup> “In computing, a **Uniform Resource Locator (URL)** is a Uniform Resource  
27 Identifier (URI) that specifies where an identified resource is available and the  
28 mechanism for retrieving it. In popular usage and in many technical documents and  
verbal discussions it is often incorrectly used as a synonym for URI. The best-known  
example of a URL is the ‘address’ of a web page on the World Wide Web, e.g.  
<http://www.example.com>.” (Exh. 18).

1 comprise a separate system but may be integrated into interface server 110. (Exh. 1,  
2 pg. 20, col. 4, lines 1-3).

3 Claims 1, 2, 3, 8, 9 and 12 of the '122 patent each recite certain method steps  
4 performed by the interface server computer and data base system. As shown in detail  
5 below, Myspace and Facebook each infringe claims 1, 2, 3, 8, 9 and 12 because their  
6 respective interface server computers (e.g. the computer systems at  
7 www.myspace.com and www.facebook.com, respectively) perform all of the method  
8 steps recited in those claims.

9 **B. Myspace and Facebook Each Infringe Claim 1 of the '122 Patent**

10 Claim 1 of the '122 patent recites certain method steps performed by an  
11 interface server computer and a connected data base system. As shown below, the  
12 interface server computers and data base systems of Myspace and Facebook perform  
13 each of the claimed method steps of claim 1.

14 **1. Myspace and Facebook Each Maintain a Database of Member Information**

15 The first step of claim 1 is “**maintaining a database comprising information**  
16 **associated with each of said plurality of members at a database system connected**  
17 **to said interface server computer.”** (Exh. 1, pg. 25, col. 13, lines 65-67). Myspace  
18 and Facebook clearly maintain a database of information associated with their  
19 members at a database system connected to their interface server computers at  
20 www.myspace.com and www.facebook.com. That must be the case because when an  
21 individual member’s Myspace or Facebook home page is requested from the Myspace  
22 or Facebook interface server computers, the received page contains information about  
23 the member (such as, for example, the member’s name, birthday, residence city, etc.).  
24 To do so, that information must have been stored in a database, and the database must  
25 be connected to the interface server computers. Examples of information about a  
26 member shown on actual home pages of members of Myspace and Facebook are  
27 reproduced below (Exhs. 2-3 and 5-6):  
28



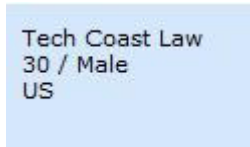


Fig. 1 Information from Myspace home page for Tech Coast Law

Fig. 2 Information from Facebook home page for TechCoast Law

**2. Myspace and Facebook Each Allot Individual URL’s to Each of a Plurality of Members**

The second step of claim 1 is “**allotting individual URLS to each of said plurality of members by associating an individual URL with each individual member of said plurality of members in said database system.**” (Exh. 1, pg. 25, col. 14, lines 1-4). Myspace and Facebook allot individual URL’s to their members. A form of URL used by Myspace is “*http://www.myspace.com/membertextnameornumber.*” An example is *http://www.myspace.com/523613778.* (Weyer Decl. ¶¶6 and 8). A form of URL used by Facebook is “*http://www.facebook.com/profile.php?id=membertextnameornumber.*” An example is *http://www.facebook.com/profile.php?id=100000771225292.* (Weyer Decl. ¶¶6 and 12). It is clear that the individual URL’s are associated with the individual members in the database systems of Myspace and Facebook because Myspace and Facebook each provide a search facility where one can search their respective databases by member names, and in response to such a search the database provides the members URL’s. (Weyer Decl. ¶¶11 and 15, Exhs. 4 and 7).

1 **3. Myspace and Facebook Each Associate a Home Page of a Member with the**  
2 **Member’s Alloted Individual URL that Includes Information about the**  
3 **Member, a “First Control” for Submitting a Comment About the Member,**  
4 **and a “Second Control” for Sending a Message to the Member.**

5 The third step of claim 1 is “**associating an individual home page for each**  
6 **said individual member of said plurality of members with said individual URL**  
7 **allotted to said individual member in said database system, said individual home**  
8 **page comprising information from said database associated with said individual**  
9 **member; a first control for submitting a comment about said individual member;**  
10 **and a second control separate from said first control for sending a message other**  
11 **than said comment to said individual member.”** (Exh. 1, pg. 25, col. 14, lines 5-  
12 14). Myspace and Facebook each associate an individual home page for a member  
13 with the URL allotted to that member. Those home pages are displayed, for example,  
14 when the URL for the member is entered in an internet browser such as Microsoft  
15 Internet Explorer, Mozilla Firefox, or Apple Safari. As shown in the Myspace and  
16 Facebook home pages for Tech Coast Law reproduced below (Weyer Decl. ¶¶9-10  
17 and 13-14, Exhs. 2-3 and 5-6), the home pages of Myspace and Facebook members  
18 include information about the member, a first control for posting a comment about the  
19 member, and a second control for sending a message to the member:  
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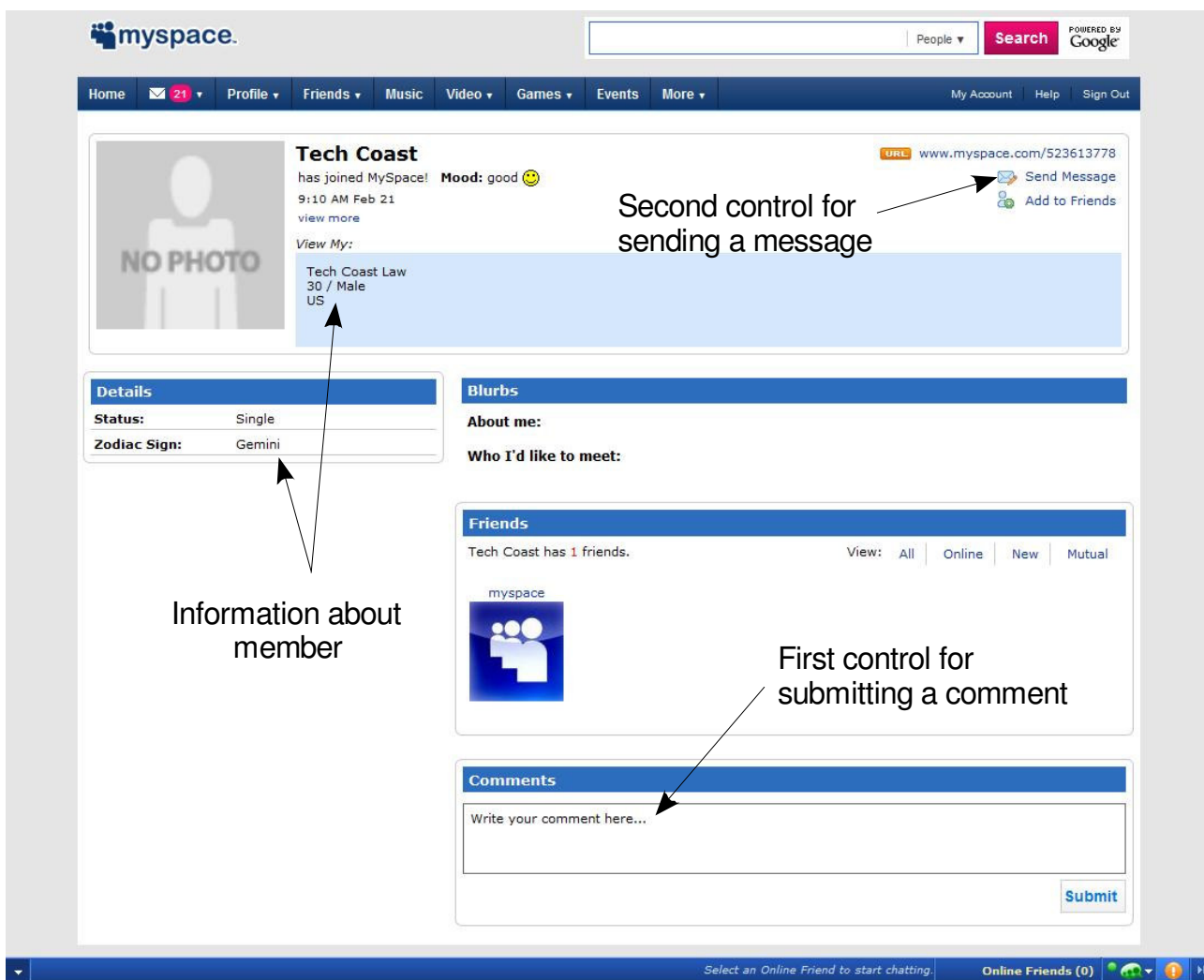


Fig. 3 Myspace Home Page for Tech Coast Law (Exh. 3)

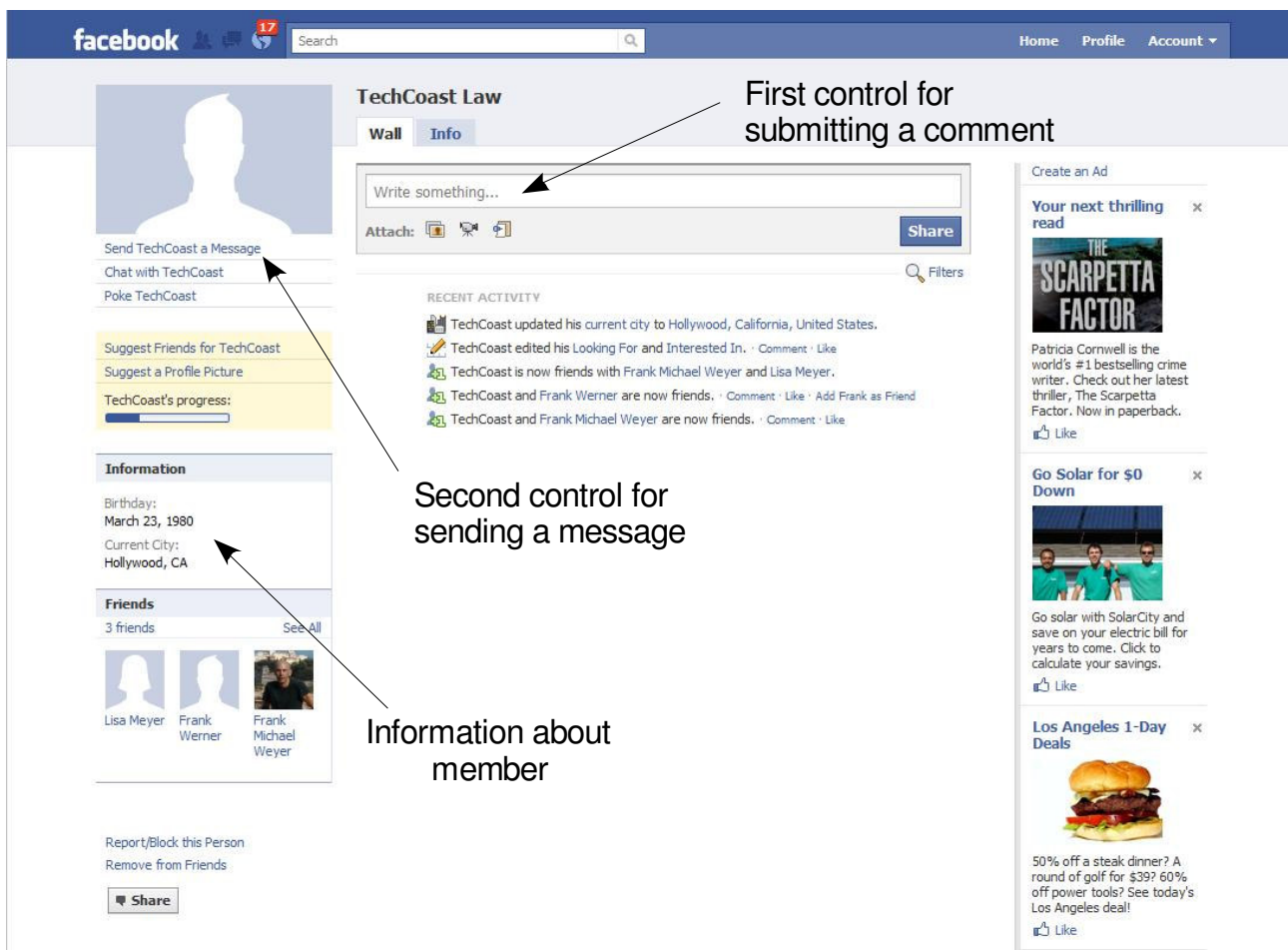


Fig. 4 Facebook Home Page for TechCoast Law (Exh. 6)


4. **The www.myspace.com and www.facebook.com Server Computers Each Provide Member’s Homepages in Response to Receiving Requests for the URL’s Associated with the Member**

The last two steps of claim 1 are “receiving by said interface server an online request for said individual URL from a requesting source; providing said individual home page by said interface server computer to said requesting source.” (Exh. 1, pg. 25, col. 14, lines 15-18). The interface server computers of Myspace and Facebook each provide a member’s individual home page in response to receiving a request for the individual URL associated with the member. For example,

1 in response to receiving a request for the URL <http://www.myspace.com/523613778>,  
2 Myspace’s interface server computer at [www.myspace.com](http://www.myspace.com) returns the individual  
3 Myspace home page for Tech Coast Law shown in Fig. 3 above. (Weyer Decl. ¶¶9-10  
4 Exhs. 2-3). Similarly, in response to receiving a request for the URL  
5 <http://www.facebook.com/profile.php?id=100000771225292>, Facebook’s interface  
6 server computer at [www.facebook.com](http://www.facebook.com) returns the individual Facebook home page for  
7 TechCoast Law shown in Fig. 4 above. (Weyer Decl. ¶¶ 13-14, Exhs. 5-6).

8  
9 As shown above, Myspace and Facebook perform each of the method steps of  
10 independent claim 1. Accordingly, Myspace and Facebook each infringe independent  
11 claim 1.

12  
13 **C. Myspace and Facebook Each Infringe Claim 2 of the ‘122 Patent**

14 Claim 2 of the ‘122 patent adds to the method of claim 1 the additional step of  
15 **“providing by said interface server computer a message entry interface in**  
16 **response to activation of said second control.”** (Exh. 1, pg. 25, col. 14, lines 19-  
17 21). Myspace and Facebook’s interface server computers at [www.myspace.com](http://www.myspace.com) and  
18 [www.facebook.com](http://www.facebook.com) each provide a message entry interface in response to activation  
19 of the respective “second controls” (i.e. the controls for sending a message to a  
20 member) on a member’s home page. For example, upon activating the  
21  control shown in Fig. 3 above, Myspace’s interface server computer  
22 provides the message entry interface shown below (Weyer Decl. ¶16, Exh. 8):  
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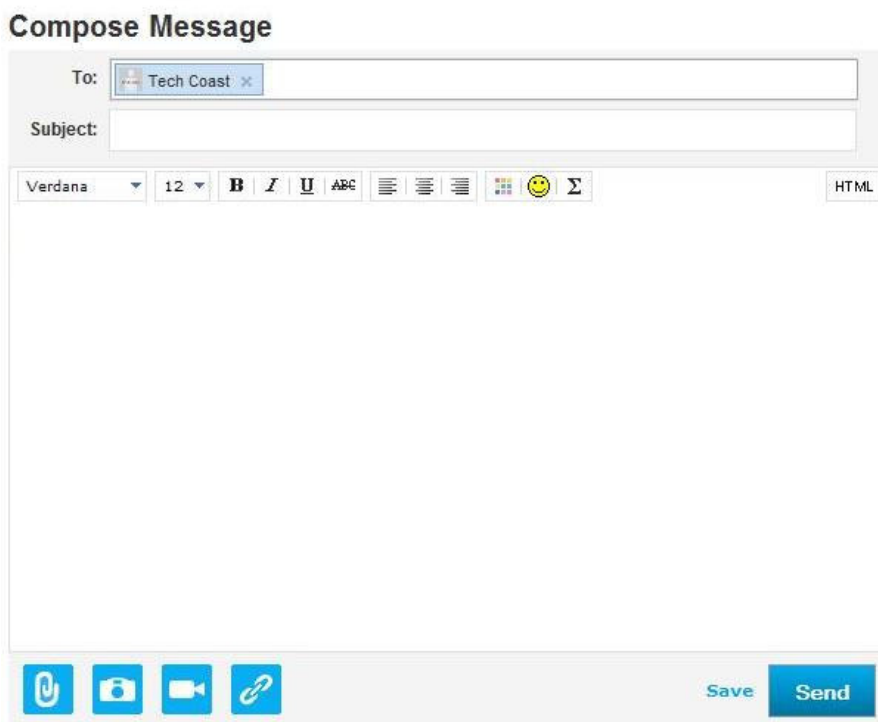


Fig. 5 Myspace Message Entry Interface (Exh. 8)

Similarly, upon activating the [Send TechCoast a Message](#) control shown in Fig. 4 above, Facebook's interface server computer provides the message entry interface shown below (Weyer Decl. ¶19, Exh. 11):



Fig. 6 Facebook Message Entry Interface (Exh. 11)

1 Accordingly, by performing all of the steps of claim 1 as well as the additional  
2 step added by claim 2, Myspace and Facebook each infringe claim 2.

3 **D. Myspace and Facebook Each Infringe Claim 3 of the ‘122 Patent**

4 Claim 3 of the ‘122 patent adds to the method of claim 1 the additional step of  
5 **“providing by said interface server computer a comment entry interface in**  
6 **response to activation of said first control.”** (Exh. 1, pg. 25, col. 14, lines 22-24).

7 Myspace and Facebook’s interface server computers at www.myspace.com and  
8 www.facebook.com each provide a comment entry interface in response to activation  
9 of the respective “first controls” (i.e. the controls for submitting a comment about a  
10 member) on a member’s home page. For example, upon activating the

11 *Write your comment here...* control shown in Fig. 3 above, Myspace’s interface server  
12 computer provides the comment entry interface shown below (Weyer Decl. ¶22, Exh.  
13 14):

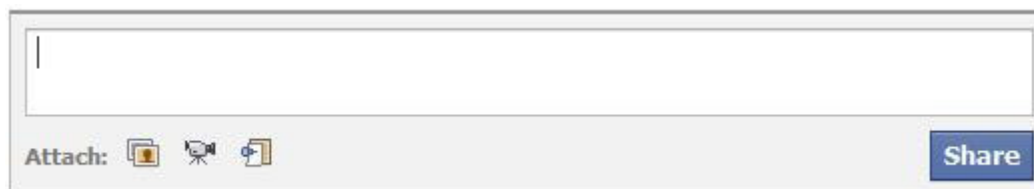


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24 Fig. 7 Myspace Comment Entry Interface (Exh. 14)

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26 Similarly, upon activating the *Write something...* control shown in Fig. 4 above,  
27 Facebook’s interface server computer provides the comment entry interface shown  
28



1 below (Weyer Decl. ¶24, Exh. 16):



6 Fig. 8 Facebook Comment Entry Interface (Exh. 14)

7 Accordingly, by performing all of the steps of claim 1 as well as the additional  
8 step added by claim 3, Myspace and Facebook each infringe claim 3.

9  
10 **E. Myspace and Facebook Each Infringe Claim 8 of the ‘122 Patent**

11  
12 Claim 8 of the ‘122 patent adds to the method of claim 2 the additional step of  
13 “receiving by said interface server computer a message entered into said message  
14 entry interface.” (Exh. 1, pg. 25, col. 14, lines 38-40). After a user enters a message  
15 into Myspace and Facebook’s message entry interfaces shown in Figs. 5 and 6 above  
16 and clicks on their respective “Send” controls, the interface server computers at  
17 www.myspace.com and www.facebook.com each provide a confirmation message  
18 that the message entered into the message entry interface has been sent, thereby  
19 demonstrating that the message has been received by the interface server computers  
20 (to send the messages, the interface server computers must have first received them).  
21 The confirmation messages provided by the Myspace and Facebook interface servers  
22 are shown in Figs. 9 and 10 below (Weyer Decl. ¶¶ 17 and 20, Exhs. 9 and 12):



26 Fig. 9 Myspace Confirmation of Message Being Sent (Exh. 9)



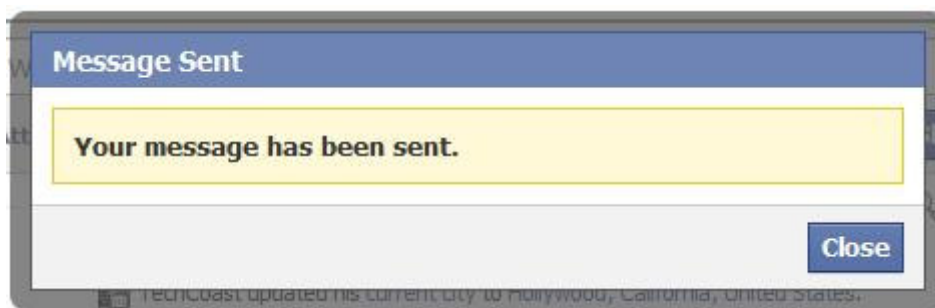


Fig. 10 Facebook Confirmation of Message Being Sent (Exh. 10)

Accordingly, by performing all of the steps of claims 1 and 2 as well as the additional step added by claim 8, Myspace and Facebook each infringe claim 8.

**F. Myspace and Facebook Each Infringe Claim 9 of the ‘122 Patent**

Claim 9 of the ‘122 patent adds to the method of claim 3 the additional step of **“receiving by said interface server computer a comment entered into said comment entry interface.”** (Exh. 1, pg. 25, col. 14, lines 42-44). After a user enters a comment into Myspace and Facebook’s respective comment entry interfaces shown in Figs. 7 and 8 above and clicks on their respective “Submit” and “Share” controls, the comments entered into the comment entry interfaces appear on the home page of the member about whom the comment has been posted, as shown Figs. 11 and 12 below (Weyer Decl. ¶¶ 22-25, Exhs. 15 and 17):

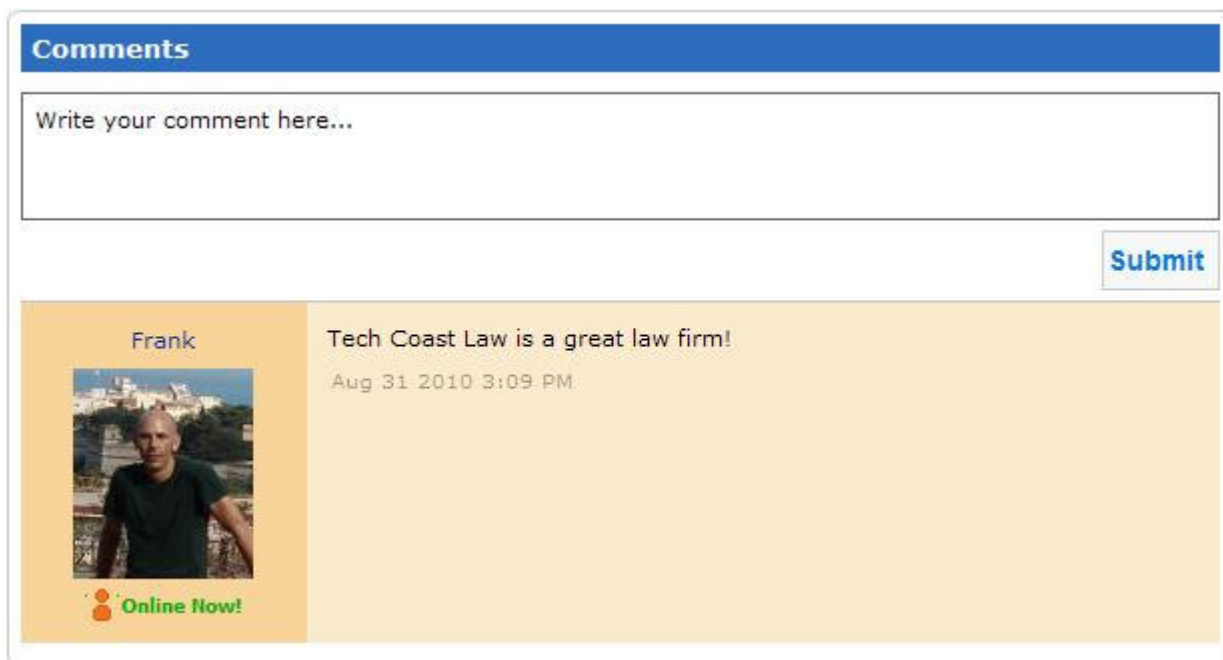


Fig. 11 Comment Appears on Member's Myspace Home Page (Exh. 15)

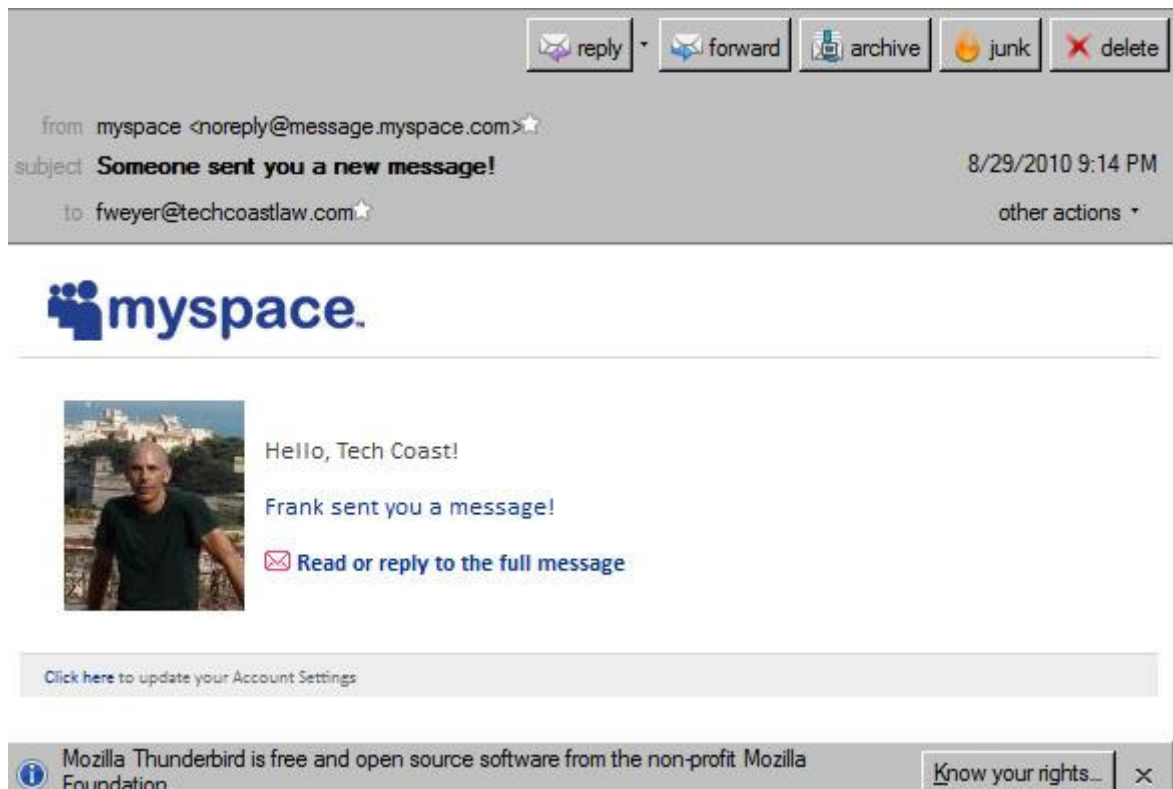


Fig. 12 Comment Appears on Member's Facebook Home Page (Exh. 17)

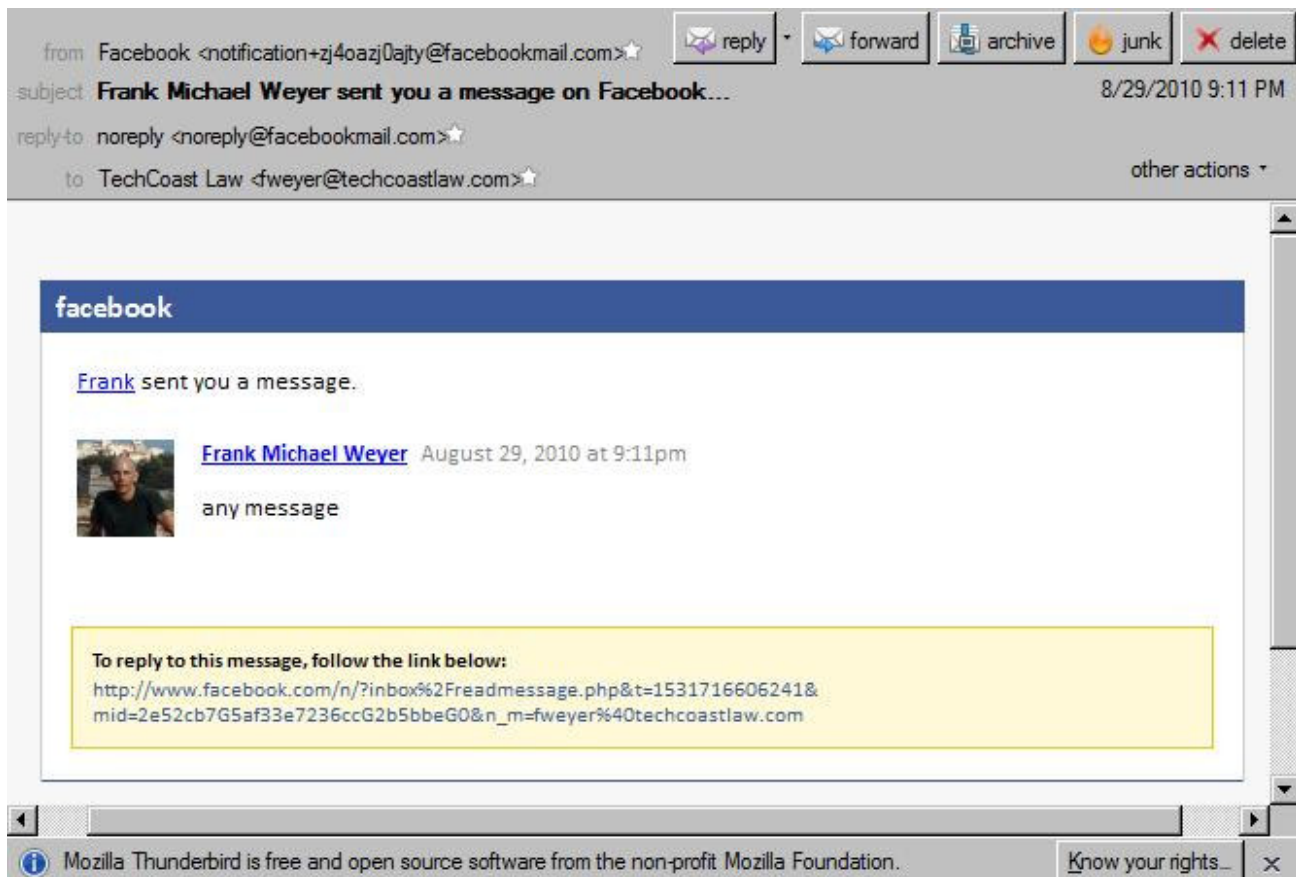
To be able to post the comments entered into the comment entry interface on a member's home page, the Myspace and Facebook interface server computers must have received those comments. Accordingly, by performing all of the steps of claims 1 and 3 as well as the additional step added by claim 9, Myspace and Facebook each infringe claim 9.

1  
2 **G. Myspace and Facebook Each Infringe Claim 12 of the ‘122 Patent**

3 Claim 12 of the ‘122 patent adds to the method of claim 8 the additional step of  
4 **“sending by said interface server computer a message to an existing e-mail**  
5 **address for said individual member in response to receiving said message entered**  
6 **into said message entry interface.”** (Exh. 1, pg. 25, col. 14, lines 51-55). After a  
7 user enters a message into Myspace and Facebook’s message entry interfaces shown  
8 in Figs. 5 and 6 above and clicks on their respective “Send” controls, the interface  
9 server computers at www.myspace.com and www.facebook.com each send a message  
10 to an existing email address of the member for whom the message has been entered  
11 into their respective message entry interfaces informing the member that a message  
12 has been sent to them. Examples of such messages sent by the Myspace and  
13 Facebook interface servers to existing email addresses of an individual member are  
14 shown in Figs. 13 and 14 below (Weyer Decl. ¶¶ 17-18 and 20-21, Exhs. 10 and 13):



1 Fig. 13 Myspace Message Sent to Existing Email Address of Member (Exh. 10)



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16 Fig. 14 Facebook Message Sent to Existing Email Address of Member (Exh. 13)

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18 Accordingly, by performing all of the steps of claims 1, 2 and 8 as well as the  
19 additional step added by claim 12, Myspace and Facebook each infringe claim 12.

20 he

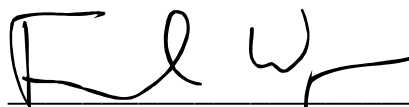
1 **IV. CONCLUSION**

2 As shown above and as summarized in the infringement claim charts of Exhs.  
3 21 and 22, there are no triable issues of material fact concerning Myspace and  
4 Facebook's infringing use of the methods claimed in Claims 1, 2, 3, 8, 9 and 12 of the  
5 '122 patent. Summary adjudication of patent infringement, therefore, should be  
6 granted.

7  
8 Respectfully submitted,  
9 TECHCOASTLAW®

10 Dated: September 1, 2010

By:



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