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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

EXPRESS MOBILE, INC.,)
)
Plaintiff,)
)
v.)
)
ADOBE INC. d/b/a ADOBE SYSTEMS)
INCORPORATED AND)
X.COMMERCE INC. d/b/a MAGENTO,)
)
Defendants.)
_____)

Case No. _____

**COMPLAINT FOR PATENT
INFRINGEMENT**
JURY TRIAL DEMANDED

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1 **COMPLAINT FOR PATENT INFRINGEMENT**

2 Plaintiff Express Mobile, Inc. (“Express Mobile” or “Plaintiff”), by its attorneys,
3 demands a trial by jury on all issues so triable and for its Complaint against Adobe, Inc. d/b/a
4 Adobe Systems Incorporated (“Adobe”) and X.Commerce Inc. d/b/a Magento (“Magento”),
5 which alleges the following:

6 **NATURE OF THE ACTION**

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

12 **THE PARTIES**

13 2. Plaintiff Express Mobile, Inc. is an inventor-owned corporation organized under
14 the laws of the State of Delaware with a place of business at 38 Washington Street, Novato, CA
15 94947.

16 3. Adobe Inc. (“Adobe”) is a corporation organized and existing under the laws of
17 Delaware, and is a resident of this District with its principal place of business at 345 Park
18 Avenue, San Jose, CA 95110-2704. Adobe may be served through its registered agent for
19 service in California, Karen Robinson, 345 Park Avenue, San Jose, CA 95110.

20 4. X.Commerce Inc. (“Magento”) is a corporation organized and existing under the
21 laws of the state of Delaware, with its principal place of business at 345 Park Avenue, San Jose,
22 CA 95110-2704. Magento may be served through its registered agent for service in California,
23 CSC – Lawyers Incorporating Service (C1592199), 2710 Gateway Oaks Drive, Suite 150N,
24 Sacramento, CA 95833--3502.

25 5. On May 21, 2018, Adobe announced its plans to acquire Magento, and Adobe’s
26 acquisition of Magento was completed on June 19, 2018. (See

27 [https://news.adobe.com/news/news-details/2018/Adobe-to-Acquire-Magento-](https://news.adobe.com/news/news-details/2018/Adobe-to-Acquire-Magento-Commerce/default.aspx)
28 [Commerce/default.aspx](https://news.adobe.com/news/news-details/2018/Adobe-Completes-Commerce/default.aspx); [https://news.adobe.com/news/news-details/2018/Adobe-Completes-](https://news.adobe.com/news/news-details/2018/Adobe-Completes-Commerce/default.aspx)

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1 [Acquisition-of-Magento-Commerce/default.aspx](#)). Today, Magento is a wholly-owned
2 subsidiary of Adobe.

3 **JURISDICTION AND VENUE**

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

6 7. On information and belief, jurisdiction and venue for this action are proper in the
7 Northern District of California.

8 8. This Court has personal jurisdiction over Adobe because it has purposefully
9 availed itself of the rights and benefits of the laws of this State and this Judicial District. On
10 information and belief, Defendant resides in the Northern District of California by maintaining
11 its principal place of business at 345 Park Avenue, San Jose, CA 95110-2703. This Court also
12 has personal jurisdiction over Adobe because it has done and is doing substantial business in this
13 Judicial District, both generally and, on information and belief, with respect to the allegations in
14 this complaint, including Adobe's one or more acts of infringement in this Judicial District.

15 9. This Court has personal jurisdiction over Magento because it has purposefully
16 availed itself of the rights and benefits of the laws of this State and this Judicial District. On
17 information and belief, Defendant resides in the Northern District of California by maintaining
18 its principal place of business at 54 N. Central Ave., Suite 200, Campbell CA 95008. This Court
19 also has personal jurisdiction over Magento because it has done and is doing substantial business
20 in this Judicial District, both generally and, on information and belief, with respect to the
21 allegations in this complaint, including Magento's one or more acts of infringement in this
22 Judicial District.

23 10. Venue is proper in this Judicial District under 28 U.S.C. §§ 1391(b) and (c) and
24 § 1400(b). Adobe has committed acts of infringement through sales of its infringing products in
25 the Northern District of California and has a principal place of business in this district. Likewise,
26 Magento has committed acts of infringement through sales of its infringing products in the
27 Northern District of California and has a principal place of business in this district.
28

1 Additionally, both Adobe and Magento have regular and established places of business in the
2 Northern District of California.

3 **THE PATENTS-IN-SUIT**

4 11. Plaintiff is the lawful owner of all rights, title, and interest in United States Patent
5 No. 6,546,397 entitled “Browser Based Web Site Generation Tool and Run Time Engine,”
6 including the right to sue and to recover for infringement thereof. The ’397 patent was duly and
7 legally issued on April 8, 2003, naming Steven H. Rempell as the inventor. A true and correct
8 copy of the ’397 patent is attached as Exhibit A.

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

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

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

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

25 16. Accordingly, each claim of the ’397 patent recites a combination of elements
26 sufficient to ensure that the claim amounts to significantly more than a patent on an ineligible
27 concept.

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1 17. In Case No. 3:18-CV-04679-RS, a case filed in the Northern District of
2 California, the defendant in that action, Code and Theory LLC. brought a Motion to Dismiss
3 Plaintiff's Complaint asserting that the '397 patent and U.S. Patent No. 7,594,168 (asserted in
4 Count II below) are not subject matter eligible under 35 U.S.C. § 101 as a matter of law. (Case
5 No. 3:18-CV-04679-RS Dkt.35). Subsequent briefing included Plaintiff Express Mobile, Inc.'s
6 Opposition to Defendant Code and Theory LLC's Motion to Dismiss Plaintiff's Complaint (Case
7 No. 3:18-CV-04679-RS Dkt.40), and Motion to Dismiss Plaintiff's Complaint [sic] (Case No.
8 3:18-CV-04679-RS Dkt.41). Each of those filings is incorporated by reference into this
9 Complaint.

10 18. In C.A. 2:17-00128, a case filed in the Eastern District of Texas, the defendant in
11 that action, KTree Computer Solutions brought a Motion for Judgment on the Pleadings asserting
12 that the '397 patent and U.S. Patent No. 7,594,168 (asserted in Count II below) were invalid as
13 claiming abstract subject matter under 35 U.S.C. § 101. (C.A. 2:17-00128 Dkt. 9.) Subsequent
14 briefing included Plaintiff's Response and related Declarations and Exhibits (C.A. 2:17-00128
15 Dkt. 17, 22-24), KTree's Reply (C.A. 2:17-00128 Dkt. 25), and Plaintiff's Sur-Reply and related
16 Declarations and Exhibits (C.A. 2:17-00128 Dkt. 26-27). Each of those filings is incorporated
17 by reference into this Complaint.

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

26 20. In Case No. 3:18-CV-04688-RS, a case filed in the Northern District of
27 California, the defendant in that action, Pantheon Systems, Inc. brought a Motion to Dismiss
28 Counts I and II of Plaintiff's First Amended Complaint asserting that the '397 patent and U.S.

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