

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION**

Voxer, Inc. and Voxer IP LLC

Plaintiffs,

v.

Facebook, Inc. and Instagram LLC

Defendants.

Civil Action No. 6:20-cv-00011

Jury Trial Demanded

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs Voxer, Inc. and Voxer IP LLC (collectively “Voxer”) assert the following claims for patent infringement against Defendants Facebook, Inc. (“Facebook”) and Instagram LLC (“Instagram”), and allege as follows.

INTRODUCTION

1. Voxer brings this action to redress Facebook and Instagram’s extensive unauthorized use of its patented communications technologies.
2. Tom Katis is Voxer’s co-founder and served as CEO until 2015. He reenlisted in the United States Army after the attacks of September 11, 2001, and served as a Special Forces Communications Sergeant in a combat deployment to Afghanistan. When his combat unit was ambushed in Kunar Province in 2003, Mr. Katis coordinated medevac, tactical reinforcements, and close air support under enemy fire. He completed his mission but experienced the shortcomings of existing communications systems. These systems could operate only in real-time or after complete message composition, and were ill-suited for time-sensitive communications with multiple groups in a highly disruptive environment.

3. Mr. Katis and his team began developing communications solutions in 2006 to remedy these shortcomings. The new technologies enabled transmission of voice and video communications with the immediacy of live communication and the reliability and convenience of messaging. The technologies allowed transmission and reception under poor and varying network conditions and regardless of recipient availability.

4. Voxer launched the Voxer Walkie Talkie app in 2011. It became an immediate success and was named Best Overall App in the First Annual Silicon Valley Business App Awards in 2013.

5. Facebook approached Voxer about a potential collaboration soon after the app's launch. By February 2012, Voxer had disclosed its patent portfolio and proprietary technology to Facebook. When early meetings did not result in an agreement, Facebook identified Voxer as a competitor although Facebook had no live video or voice product at the time. Facebook revoked Voxer's access to key components of the Facebook platform and launched Facebook Live in 2015 followed by Instagram Live in 2016. Both products incorporate Voxer's technologies and infringe its patents.

NATURE OF THE ACTION

6. This is a civil action for infringement under the patent laws of the United States of America, 35 U.S.C. § 1 *et seq.*

7. Voxer is the owner of all rights, title, and interest in U.S. Patent Nos. 8,180,030; 9,634,969; 10,109,028; 10,142,270; and 10,511,557 (collectively, the "Asserted Patents").

8. Defendants have infringed and continue to infringe, directly and indirectly, one or more claims of Voxer's Asserted Patents by making, using, selling, and offering to sell the Facebook and Instagram mobile applications, mobile devices running the Facebook or Instagram mobile applications, and systems, servers, and services used with Facebook Live or Instagram

Live in the United States, including in this District. Voxer seeks injunctive relief and monetary damages.

THE PARTIES

9. Plaintiff Voxer, Inc. is a Delaware corporation with its principal place of business at 1185 Mission St., San Francisco, California. Plaintiff Voxer IP LLC is a Delaware limited liability company and the legal owner by assignment of the Asserted Patents, which were duly and legally issued by the United States Patent and Trademark Office (“USPTO”). Voxer IP LLC is a wholly owned subsidiary of Voxer, Inc.

10. Defendant Facebook is a Delaware corporation with a principal place of business at 1 Hacker Way, Menlo Park, California. Facebook maintains offices in Austin, Texas, operates and owns the facebook.com and instagram.com websites, and markets, offers, and distributes the Facebook Live and Instagram Live services, as well as the Facebook and Instagram applications for mobile and other devices throughout the United States including in this District.

11. Defendant Instagram is a Delaware limited liability company. Instagram is a wholly owned subsidiary of Facebook that operates and owns the instagram.com website. It markets, offers, and distributes the Instagram Live service and the Instagram application for mobile and other devices throughout the United States including in this District.

12. Each of the Defendants directly and indirectly develops, designs, manufactures, distributes, markets, offers to sell, and sells infringing products and services in the United States, including in this District, and otherwise purposefully directs infringing activities to this District in connection with the facebook.com and instagram.com websites, the Facebook Live and Instagram Live services, the Facebook and Instagram applications for mobile and other devices, and devices running the Facebook or Instagram applications.

13. Defendants have been and are acting in concert, and are otherwise liable jointly, severally, or otherwise for relief related to or arising out of the same transaction, occurrence, or series of transactions or occurrences related to the making, using, selling, offering for sale, or otherwise distributing the facebook.com and instagram.com websites, the Facebook Live and Instagram Live services, the Facebook and Instagram applications for mobile and other devices, and devices running the Facebook or Instagram applications in this District.

14. In addition, this action involves questions of law and fact that are common to all Defendants. For example, Facebook and Instagram use at least some common servers and software to provide the infringing Facebook Live and Instagram Live services. As another example, in 2014, Facebook migrated Instagram data from third party servers onto its own data centers.¹ Accordingly, Facebook is acting in concert with Instagram in connection with the provision of their live messaging services.

JURISDICTION AND VENUE

15. This is a civil action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 1 *et seq.* This Court has subject matter jurisdiction over the matters asserted in this Complaint under 28 U.S.C. §§ 1331 and 1338(a) and 35 U.S.C. §§ 271 *et seq.*

16. This Court has personal jurisdiction over Facebook in accordance with due process and/or the Texas Long Arm Statute because, in part, Facebook “recruits Texas residents, directly or through an intermediary located in this state, for employment inside or outside this state.” Tex. Civ. Prac. & Rem. Code § 17.042(3).

17. This Court has personal jurisdiction over Facebook, in part because Facebook does continuous and systematic business in this District, including by providing infringing

¹ Instagram Engineering, *Migrating from AWS to FB* (June 25, 2014), <https://instagram-engineering.com/migrating-from-aws-to-fb-86b16f6766e2>.

products and services to residents of this District that Facebook knew would be used within this District, and by soliciting business from residents of this District.

18. For example, Facebook is subject to personal jurisdiction in this Court because, *inter alia*, it has a regular and established place of business at its offices in this District, including Facebook offices located in Austin, Texas, and elsewhere in Texas.² The Facebook Austin location is its fourth-largest office, and Facebook employs more than 1,200 people in Austin.³ The Travis County Appraisal District website indicates that Facebook owns property in this judicial district appraised at a total of \$26,976,598 at the following addresses: 300 West 6th Street 1000, Austin, Texas 78701; 600 Congress Avenue 1700, Austin, Texas 78701; 221 West 6th Street 300, Austin, Texas 78701; 11601 Alterra Parkway 1000, Austin, Texas 78758; and 11801 Domain Drive Floor 2, Austin, Texas 78758.⁴

19. Facebook's Austin offices are a regular and established places of business at least because these locations include many members of Facebook's important teams, including Software Engineering, Legal, Finance, Facilities & Admin, Enterprise Engineering, People & Recruiting, Design & User Experience, Infrastructure, Data & Analytics, Sales & Marketing,

² The Facebook Austin office expanded to a large office building known as "Third + Shoal" and has multiple addresses listed, including 607 West 3rd Street, Austin, Texas 78701. *See* Cindy Widner, *Facebook's New Austin Office Has 14 Art Installations and a Jam Room* (Sept. 11, 2019), <https://austin.curbed.com/2019/9/4/20849712/facebook-new-office-austin-open>. Facebook takes up "most of the space" in this 29-story building, an estimated 256,500 square feet of office space of the 345,000 square feet available. *Id.* Facebook maintains, or previously maintained, a number of additional offices in this judicial district, including at 300 West 6th Street, Austin, Texas 78701, 11601 Alterra Parkway, Austin, Texas 78758, and 13011 McCallen Pass, Building D, Austin, Texas 78753.

³ *Id.*

⁴ *Property Search Options*, Travis CAD, <http://propaccess.traviscad.org/clientdb> (search in search bar for "Facebook") (last visited Jan. 6, 2020).

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