**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

MYMAIL, LTD.,	§	
	§	
Plaintiff,	§	
	§	Civil Action No. 3:17-cv-_____
v.	§	
	§	Jury Trial Demanded
YAHOO HOLDINGS, INC.,	§	
	§	
Defendant.	§	

PLAINTIFF'S COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff MyMail, Ltd. files this Complaint against Yahoo!, Inc. and alleges as follows.

PARTIES

1.   Plaintiff MyMail, Ltd. ("MyMail") is a Texas Limited Partnership with an office and place business at 5344 County Road 3901, Athens, TX 75752. MyMail was founded in 2003 as an intellectual property development and licensing company to provide secure, internet-related services and efficient web page interaction to internet service providers, mobile device manufacturers, network carriers, and internet related toolbar developers. MyMail's toolbar patents disclose inventions that allow for the dynamic updating, changing, or modification of toolbar data from remote servers (the "MyMail Toolbar Technology"). Using the MyMail Toolbar Technology, toolbar providers can, for example, dynamically change elements, functions, and buttons on their toolbar(s) for specific targeted users based on use and individual searches. MyMail has successfully licensed the MyMail Toolbar Technology to toolbar providers.

2.   Upon information and belief, Defendant Yahoo Holdings, Inc., is a corporation organized and existing under the laws of the State of Delaware, with its principal place of

business located at 701 First Avenue, Sunnyvale, California 94089. Yahoo Holdings may be served with process through its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201. Prior to June 13, 2017, the business of Yahoo Holdings was conducted through an entity entitled Yahoo!, Inc., which was a corporation also organized and existing under the laws of the State of Delaware, with its principal place of business located at 701 First Avenue, Sunnyvale, California 94089. On June 13, 2017, Yahoo, Inc. transferred all assets and liabilities relevant to the subject matter of this case to Yahoo Holdings, Inc. Yahoo Holdings, Inc., and Yahoo!, Inc., shall collectively be referred to herein as "Yahoo."

JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the patent laws of the United States of America, Title 35, United States Code. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. Yahoo has been engaged in the business of publishing and distributing a browser plug-in called the "Yahoo Toolbar" that integrates with Microsoft Internet Explorer, Mozilla Firefox, and Google Chrome browsers to allow users to access Yahoo search, email, weather, and other functionalities from any web page location, and other software, such as the "Yahoo! Auto Updater" (the "YAU"), that works in conjunction with the Yahoo Toolbar (the Yahoo Toolbar and the YAU are collectively referred to herein as the "Yahoo Toolbar"). The Yahoo Toolbar docks itself to a device's browser when installed and sits atop the browser at all times. Yahoo publishes, promotes, and distributes the Yahoo Toolbar to users in the United States, including users within this District.

5. Upon information and belief, Yahoo is subject to this Court's specific personal jurisdiction because it does business in the State of Texas and has designated an agent for service

of process in the State of Texas; and has committed acts of infringement in the State of Texas as alleged below. In particular, upon information and belief, Yahoo is subject to the specific personal jurisdiction of this Court because MyMail's claims for patent infringement against Yahoo arise from its acts of infringement in the State of Texas. These acts of infringement include providing the infringing Yahoo Toolbar to users in the State of Texas, causing the browser on a user device to display the Yahoo Toolbar and perform the other functions of one or more claims of United States Patent No. 8,275,863, and causing the user device running the Yahoo Toolbar to perform the functions of one or more claims of that patent. Therefore, this Court has personal jurisdiction over the Defendant under the Texas long-arm statute, TEX. CIV. PRAC. & REM. CODE §17.042.

6.   Venue is proper in this District under 28 U.S.C. § 1400(b) because Yahoo has committed acts of infringement in the State of Texas, including in this District as alleged below, and because Yahoo has a regular and established place of business in this District located at 1680 N Glennville Drive, Richardson, Texas 75081. More particularly, these acts of infringement include providing the infringing Accused instrumentalities to users in the State of Texas, including in this District, causing the browser on a user Internet device to display the Yahoo Toolbar and perform the other functions of one or more claims of the patent asserted in this action.

THE PATENT-IN-SUIT

7.   On September 25, 2012, the United States Patent and Trademark Office issued United States Patent No. 8,275,863 (the "'863 Patent" or the "Asserted Patent") entitled "Method of Modifying a Toolbar," a true copy of which is attached as Exhibit 1.

8.   The '863 Patent relates to methods and apparatus for modifying a toolbar for a user Internet device. The patent dates back to 1997, when the World Wide Web was in its infancy. At that time, trying to provide users with useful tools for dealing with this emerging technology frontier involved significant trial and error. The claimed toolbar invention of the '863 Patent solved the important problem of keeping a user's toolbar up-to-date from a centralized server.

9.   For example, the '863 Patent describes a "button bar" or "toolbar" that "can be dynamically changed or updated" over the Internet from a server. Exhibit 1, 10:16-17; Fig. 16. The toolbar buttons are defined by a "button bar database" that "includes information related to button bar creation and modification." *Id*. at 10:7-14. The button bar database stores "attributes" that define the toolbar's button, including text, format, and function. *Id*. at 10:38-50. "Each Toolbar button may be programmed with a function in the button bar database." *Id*. at 10:37-38. For example, a button can be configured to "go to the USA Today … web site," or to launch a script or a program such as an "email program." *Id*. at 10:38-11:4; 10:48-49; Fig. 10.

10.   Unlike other toolbars available in 1997, the claimed novel toolbar's configuration can be changed based on configuration updates received from a server. For example, the toolbar has a "pinger" process for obtaining updates to the toolbar database. *Id*. at 10:30-32. When a user connects to the Internet through a computing device, the user's device "dispatches an initial 'pinger' message to the access service 106 via the Internet 100." *Id*. at 11:44-47. The pinger message includes the current database revision levels and, from this information, the access service determines if the toolbar database needs an update. *Id*. at 12:19-24. If the access service determines that the user Internet device should receive updated toolbar data, updated toolbar data is provided. *Id*. at 15:2-10.

11.   MyMail is the owner of the '863 Patent, and has the exclusive right to sue for and recover all past, present and future damages for infringement of the Asserted Patent.

COUNT 1 -- INFRINGEMENT OF U.S. PATENT NO. 8,275,863

12.   Plaintiff incorporates paragraphs 1 through 11 as though fully set forth herein.

13.   Upon information and belief, the Yahoo Toolbar contains software that causes a toolbar to be displayed on a user Internet device (*i.e.*, a device that can communicate with other devices via the Internet) that includes toolbar buttons. For example, the Yahoo Toolbar displayed on a user Internet device included "Mail" and "News" buttons.

14.   Upon information and belief, the toolbar buttons on the Yahoo Toolbar are defined by toolbar data stored in one or more toolbar-defining databases on the user Internet device.

15.   Upon information and belief, the toolbar data of the Yahoo Toolbar comprises a plurality of toolbar button attributes associated with the one or more toolbar buttons of the toolbar.

16.   Upon information and belief, at least one of the toolbar button attributes identifies a function to be performed by a specific toolbar button upon actuation of the toolbar button. For example, when the "Mail" button on the Yahoo Toolbar is actuated, the user's mailbox is displayed.

17.   Upon information and belief, the Yahoo Toolbar performs a method for dynamically modifying a toolbar. For example, the Yahoo Toolbar communicates with a remote server at a predetermined IP Address to dynamically modify the Yahoo Toolbar by, for example, updating the unread mail count that is displayed on the Yahoo Toolbar. On information and belief, the Yahoo Toolbar can be dynamically changed or updated via a Pinger process because,

for example, the Yahoo Toolbar periodically checks a remote server for updates to the information being displayed to the user.

18.   Upon information and belief, the Yahoo Toolbar on the user Internet device automatically sent a revision level of the one or more toolbar-defining databases to a predetermined network address. For example, upon information and belief, the Yahoo Toolbar causes the user Internet device at specific IP address to send a "GET" request to a remote server at a predetermined IP address. Upon information and belief, the GET request includes encoded data that changes between different GET requests. On information and belief, the encoded data includes information which indicates a revision level of the one or more toolbar-defining databases.

19.   Upon information and belief, a remote server at the predetermined network address determines, from the revision level, that the user Internet device should receive the toolbar update data because the remote server responds to the GET request from the user Internet device by sending one or more application/octet-stream messages containing the updated toolbar data.

20.   The Yahoo Toolbar causes the user Internet device to receive the updated toolbar data from the Internet. For example, upon information and belief, the user Internet device receives the updated toolbar data, such as the latest mail count, in the form of one or more application/octet-stream messages containing the updated toolbar data from the remote server at the predetermined IP address.

21.   Upon information and belief, the Yahoo Toolbar initiates, at the user Internet device and without user interaction, an operation to update the toolbar data in accordance with the received updated toolbar data. For example, upon information and belief, the user Internet

device receives the updated toolbar data, such as the latest unread mail count, in the form of one or more application/octet-stream messages containing the updated toolbar data from the remote server at the predetermined IP address. The user Internet device updates the toolbar data by displaying the latest unread mail count on the "Mail" button in accordance with the received updated toolbar data without user interaction.

22. Upon information and belief, the Yahoo Toolbar further updates the toolbar data at the user Internet device based on the operation and in accordance with the updated toolbar data. For example, the remote server at the predetermined IP address sends the user Internet device updated toolbar data in the form of one or more application/octet-stream messages containing the updated toolbar data.

23. Upon information and belief, the Yahoo Toolbar is configured to receive the updated toolbar data and perform an operation that includes, for example, updating the toolbar data to modify an attribute of at least one of the one or more toolbar buttons of the toolbar. For example, upon information and belief, the Yahoo Toolbar receives the updated toolbar, in the form of an updated mail count, and modifies an attribute of at least one of the one or more toolbar buttons of the toolbar, such as by displaying the latest unread mail count on the "Mail" button without any user interaction.

24. Upon information and belief, the Yahoo Toolbar causes the toolbar, as defined by the updated toolbar data, to be displayed at the user Internet device. The information associated with the toolbar data includes an IP address.

25. Upon information and belief, the Yahoo Toolbar displays the toolbar as defined by the updated toolbar data, such as the latest unread mail count, while one or more first webpages of, for example, the Google website are being displayed on the user internet device.

26.   Upon information and belief, the Yahoo Toolbar persistently displays the toolbar with the updated toolbar data, such as the latest unread mail count, while one or more second webpages of, for example, the Yahoo website are being displayed on the user Internet device.

27.   Upon information and belief, the Yahoo Toolbar is stored in at least one computer-readable memory device such as, for example, the hard drive of the user Internet device, and comprises computer-executable instructions that perform a method for dynamically modifying a toolbar.

28.   Upon information and belief, the computer-executable instructions of the Yahoo Toolbar are embodied in computer readable memory.

29.   Upon information and belief, the Yahoo Toolbar performs a method for dynamically modifying a toolbar using a remote source accessible through a network. For example, the Yahoo Toolbar uses a remote source, such as the remote source with an IP address, to dynamically modify the Yahoo Toolbar by, for example, updating the latest unread mail count.

30.   Upon information and belief, the Yahoo Toolbar establishes a connection between a network and a user Internet device initiated by the user Internet device. For example, a connection is established with a user Internet device such as the user's personal computer, at specific IP address. The connection is initiated by the user Internet device when the user Internet device sends a "GET" request.

31.   Upon information and belief, the Yahoo Toolbar further receives at the remote source information associated with the toolbar data stored in toolbar-defining databases of the user Internet device. For example, upon information and belief, the remote source at the predetermined IP address receives a "GET" request from the user Internet device containing

information associated with the toolbar data stored in the one or more toolbar-defining databases of the user Internet device. Upon information and belief, the encoded data includes information associated with the toolbar data stored in the one or more toolbar-defining databases of the user Internet device.

32. Upon information and belief, the Yahoo Toolbar further sends from the remote source via the network to the user Internet device the updated toolbar data to be stored in the toolbar-defining databases of the user Internet device. For example, upon information and belief, the remote source at the predetermined IP address sends the user Internet device updated toolbar data in the form of one or more application/octet-stream messages containing the updated toolbar data.

33. Upon information and belief, the Yahoo Toolbar integrates with a browser, such as Internet Explorer, on a device capable of communicating with other devices over a network such as a user Internet Device.

34. Upon information and belief, the Yahoo Toolbar performs each of the functions described in one or more claims of the `863 Patent, including the functions described above. In particular, the Yahoo Toolbar software embedded in the browser of the user Internet device and remotely located, such as on a server remote from the user Internet device, instruct these devices to perform these functions. The Yahoo Toolbar directs and controls the functions of the user Internet device and the remote device(s) that perform the functions described above.

35. Upon information and belief, Yahoo has also published and distributed a software service called the "Yahoo! Auto Updater" ("YAU"). The YAU is a software program that tracked the availability of updates, downloaded them to client devices, and launched their installers. The YAU runs at all times, periodically checking those applications, such as the

Yahoo Toolbar, that have been registered with it for new updates. The YAU is capable of performing an auto update with absolutely no user interaction. In this way, upon information and belief, the YAU performs the method for dynamically modifying a toolbar disclosed and claimed in one or more claims of the Asserted Patent.

36.   To the extent any third party performs any of the functions described above, the performance of such functions is attributable to the YAU because it directs and controls the performance of those functions.

37.   Upon information and belief, Yahoo has been and is now directly infringing one or more claims of the '863 Patent by using the Accused Instrumentalities (including use for testing purposes) in the United States in violation of 35 U.S.C. § 271(a). The Accused Instrumentalities perform the method of modifying a toolbar as described in one or more of the claims of the '863 Patent.

38.   Plaintiff has been damaged by Yahoo's infringing activities.

39.   In October 2012, MyMail sent Yahoo several communications identifying the '863 Patent and providing Yahoo with information showing how the Yahoo Toolbar infringed various claims of the '863 Patent. In connection with these communications, MyMail proposed that Yahoo execute a license for a portfolio of MyMail patents, including the '863 Patent.

40.   In order to facilitate discussions between MyMail and Yahoo, the parties entered into a non-disclosure agreement and, pursuant to that agreement, MyMail provided additional information about the scope of MyMail's invention disclosed in the '863 Patent and its applicability to the Yahoo Toolbar, as well as proposed terms for a license to the MyMail patent portfolio.

41.   MyMail and Yahoo continued their discussions regarding the MyMail patent portfolio and, in particular, the '863 Patent, during 2013. During these discussions, MyMail provided Yahoo with information explaining why Yahoo's arguments suggesting that it did not infringe the '863 Patent, or that that '863 Patent was invalid, had no merit. MyMail also pointed out to Yahoo that it had continuing patent applications based upon the application leading to the '863 Patent that would likely issue soon and that covered the Yahoo Toolbar.

42.   After these discussions, Yahoo decided not to license any of MyMail's patents.

43.   On November 14, 2014 Benjamin Hattenbach ("Hattenbach"), Yahoo's outside counsel, filed a Petition for *Inter Partes* Review on behalf of a company called Conduit (the "Conduit IPR") challenging the patentability of the '863 Patent. During the Conduit IPR, MyMail submitted substantial arguments and evidence showing that the invention disclosed and claimed in the '863 Patent was novel over the prior art. Hattenbach, Yahoo's counsel, was aware of the evidence and arguments showing this fact. The Conduit IPR was settled prior to a final ruling on the merits.

44.   Yahoo, despite being aware of the '863 Patent, intentionally continued to use and provide the Yahoo Toolbar in the United States. Yahoo continued to knowingly engage in this infringing conduct with the knowledge of the facts MyMail provided to it in 2012 and 2013 showing that the Yahoo Toolbar infringed the '863 Patent, and with the knowledge of the facts provided to it by MyMail in 2012 and 2013, as well as the information acquired by Yahoo's counsel in the Conduit IPT, that the '863 Patent was valid and enforceable. Yahoo knew or should have known, based on its knowledge of these facts, that it infringed the '863 Patent and that this patent was valid and enforceable. Yahoo nevertheless willfully continued to infringe the '863 Patent with complete disregard of MyMail's patent rights. Yahoo's knowing and

intentional infringement of the '863 Patent constitutes willful and egregious infringement behavior.

DEMAND FOR JURY TRIAL

45. Plaintiff, pursuant to Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable.

RELIEF SOUGHT

WHEREFORE, Plaintiff MyMail respectfully requests the following relief:

a. A judgment in favor of Plaintiff that Yahoo has directly infringed one or more claims of the `863 Patent;

b. A judgment and order requiring Yahoo to pay Plaintiff damages adequate to compensate for infringement under 35 U.S.C. § 284, which damages in no event shall be less than a reasonable royalty for the use made of the inventions of the Asserted Patent, including pre- and post-judgment interest and costs, including expenses and disbursements;

c. A judgment imposing enhanced damages against Yahoo for its willful infringement of the '863 Patent in accordance with 35 U.S.C. § 284;

d. A judgment finding that this is an exceptional case in view of Yahoo's willful infringement of the '863 Patent and awarding MyMail its reasonable attorneys' fees in accordance with 35 U.S.C. § 285; and

e. Any and all such further necessary relief as the Court may deem just and proper under the circumstances.

Dated: November 9, 2017   Respectfully submitted,

BUETHER JOE & CARPENTER, LLC

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