IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

DOUGLAS G. RICHARDSON, Plaintiff, v. **ADOBE, Inc.** Defendant(s).	Case No. 1:22-cv- PATENT CASE JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff **DOUGLAS G. RICHARDSON** ("Doug Richardson" or "Plaintiff") files this Complaint against Adobe, Inc ("Adobe" or "Defendant") for infringement of U.S. Patent Nos. 7,388,587 ("the '587 patent"), 7,629,977 (the '977 patent), 8,035,644 ("the '644 patent"), 11,232,768 ("the '768 patent") and 11,263,998 ("the '998 patent") (collectively, the "patents-in-suit").

THE PARTIES

1. Plaintiff, DOUGLAS G. RICHARDSON is an individual residing in the State of Texas at 101 Autumn Lane, Dripping Springs, Texas 78620.

2. Defendant, Adobe, Inc is a California Corporation, having its Headquarters at 345 Park Avenue San Jose, CA 95110-2704.

JURISDICTION AND VENUE

3. Plaintiff brings this action for patent infringement under the patent laws of the United States, namely 35 U.S.C. §§ 271, 281, and 284-285, among others. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and § 1338(a) (jurisdiction over patent actions).

4. Adobe is subject to personal jurisdiction in this Court. In particular, this Court has personal jurisdiction over Adobe because Adobe has a regular and established place of business, namely their Office locations at 1540 Broadway, 43rd Floor New York, NY 10036 and at 100 Fifth Avenue, New York, NY 10011, which are located within this jurisdiction and has engaged in continuous, systematic, and substantial activities within this State, including substantial marketing and sales of products within this State and this District. Furthermore, on information and belief, this Court has personal jurisdiction over Adobe because it has committed acts giving rise to Plaintiff's claims for patent infringement within and directed to this District.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1400(b). Adobe has committed acts of infringement in this judicial district and has a regular and established place of business in this district.

6. On information and belief, Adobe has conducted and does conduct substantial business in this forum, directly and/or through subsidiaries, agents, representatives, or intermediaries, such substantial business including but not limited to: (i) at least a portion of the infringements alleged herein; (ii) purposefully and voluntarily placing one or more infringing products into the stream of commerce with the expectation that they will be purchased by consumers in this forum; or (iii) regularly doing or soliciting business, engaging in other persistent courses of conduct, or deriving substantial revenue from goods and services provided to individuals in New York and in this judicial district.

THE INVENTOR OF THE PATENTS-IN-SUIT

7. Doug Richardson (pictured below) lives in Dripping Springs, Texas. He is the named inventor of the patents-in-suit.

8. Mr. Richardson has worked in various capacities as a professional photographer. Starting with his college internship at the Texas Parks and Wildlife Department, Mr. Richardson has worked for more than two decades shooting for sports publications, commercial videos, and online advertising.

9. In the late 1990s, Mr. Richardson worked for the University of Texas as a photographer for the UT Cheerleading Team.

10. In 2001, Mr. Richardson switched to digital photography and in 2005 invented the "Cinegif," an image having an isolated area of motion that draws the viewer's eye to a particular area of the image.

11. Advertisers immediately recognized the value of focusing attention on a specific part of an image and engaged Mr. Richardson to provide his Cinegifs via his patent-pending methods and/or products.

12. For instance, Mr. Richardson provided Cinegifs for Jaguar Land Rover of Austin that appeared in online media advertising beginning in 2005. His Cinegifs garnered immediate and extensive attention.

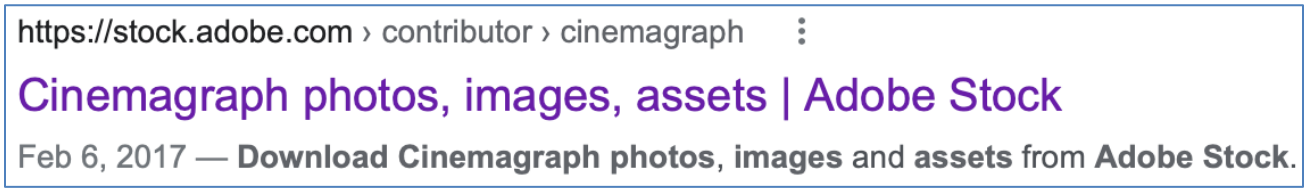
13. Advertisers across industries from automotive marketing to real estate to healthcare have used Mr. Richardson's Cinegifs to attract customers and increase click-through rates.

14. More recently, Mr. Richardson provided his Cinegifs for Maserati of Austin, Keller Williams Realty, Century 21 Realty, John Deere, Kraft, Starwood Resorts, Chick-fil-A, and Deep Eddy Vodka.

GENERAL ALLEGATIONS

15. Adobe uses, sells, offers to sell, imports into the United States and/or exports from the United States images as claimed and/or otherwise engages in practices that infringe one or more claims of the patents-in-suit.

16. On information and belief, Adobe has been advertising, marketing, and importing into the United States and/or exporting outside of the United States and selling Mr. Richardson's Cinegifs since at least early 2017. Specifically, Adobe markets and sells images that include what Adobe refers to as a "Cinemagraph." A link from Adobe marketing the sale of Cinemagraphs was available since at least as early as Feb 6, 2017:

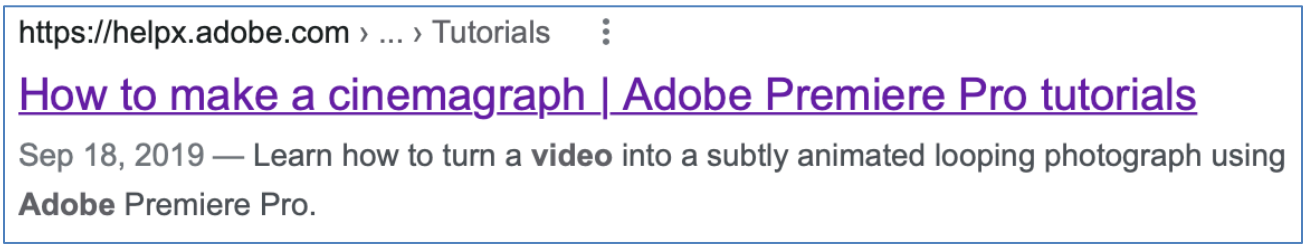


https://www.google.com/search?q=Adobe+stock+cinemagraph&sxsrf=ALiCzsYMC-sNwMrsY9b1oLDU_GLh8rfthw%3A1655320988748&ei=nDGqYu2QLfafqtsPsNyhgAs&ved=0ahUKEwjtzpecl7D4AhX2j2oFHTBuCLAQ4dUDCA0&uact=5&oq=Adobe+stock+cinemagraph&gs_lcp=Cgdnd3Mtd2l6EAMyBwgjECcQiwM6BwgjELADECc6CggAEEcQsAMQiwM6BwgjELACECc6CAgAEB4QCBANOgUIABCGA0oECEEYAEoECEYYAFCGGFiTH2C7lGgBcAF4AIABtgGIAYAGkgEDMC42mAEAoAEByAEKuAEDwAEB&sclient=gws-wiz

17. Adobe has infringed and continues to infringe the patents-in-suit by using,

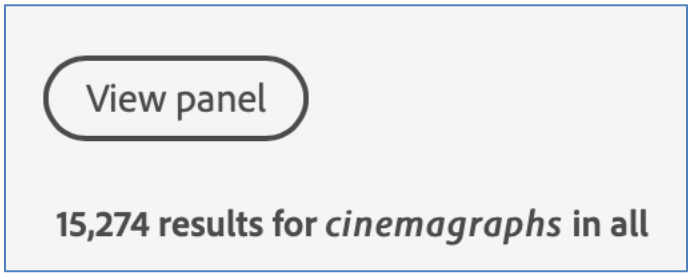
displaying, selling, offering to sell, importing into the United States or exporting from the United States images with Adobe's Cinemagraphs including Adobe's online images (the "Accused Products").

18. Adobe promotes the production of infringing Cinemagraphs, advertising them in the Google search engine:



https://www.google.com/search?q=adobe+cinemagraph+video&sxsrf=ALiCzsZzKh2XMefsmVjHzL8STQsoNkss-g%3A1655322075060&ei=2zWqYpyrA5G5qtsP_O6GgAE&ved=0ahUKEwjchJeim7D4AhWRnGoFHXy3ARAQ4dUDCA0&uact=5&oq=adobe+cinemagraph+video&gs_lcp=Cgdnd3Mtd2l6EAM6BwgAEEcQsANKBAhBGABKBAhGGABQ5wpY5wpg6QxoAnABeACAAZIBiAGSAZIBAzAuMZgBAKABAcgBCLgBAcABAQ&sclient=gws-wiz

19. Upon information and belief, Adobe sells Cinemagraphs on its website at a high volume, in an amount not yet determined.



https://stock.adobe.com/search?k=cinemagraphs

20. Adobe actively induces others to infringe the method claims of the patents-in-suit (the "Accused Methods") by promoting infringement of the Accused Methods on YouTube and other social media.

21. For example, in a YouTube tutorial that has been actively marketed by Adobe, since at least as early as September 18, 2019; *see* https://helpx.adobe.com/premiere-pro/how-

to/cinemagraph.html, Adobe describes how to make a Cinemagraph using Adobe Premiere Pro, thereby infringing Mr. Richardson's patented technology, by which providers of the Cinemagraphs to Adobe have been using to infringe the patents-in suit.

22. In addition, Adobe markets its Adobe After Effects software in a YouTube tutorial to promote making a Cinemagraph using the After Effects software, thereby infringing Mr. Richardson's patented technology, by which providers of the Cinemagraphs to Adobe have been using to infringe the patents-in suit.

23. The Adobe After Effects tutorials are both dated February 15th of 2019 and can be seen at: https://www.youtube.com/watch?v=7CtsAlHmQB4 and https://www.youtube.com/watch?v=e0ZEV3ICiro.

24. Adobe gives step by step instructions, encouragement and direction on how to create a Cinemagraph, which use and infringe the plaintiff's patented technology.

25. The Accused Methods are designed and used to practice the patents-in-suit.

26. Adobe's customers and other end users of the Accused Methods have directly infringed and continue to directly infringe the patents-in-suit by using and/or selling the Accused Products. Through its promotional materials, customer support, and/or sales and marketing activities, Adobe solicits, instructs, encourages, and aids and abets its customers to infringe the patents-in-suit by practicing the Accused Methods, and to purchase, sell, import, export and use the Accused Products and images produced, and by using the plaintiff's patented method without a license or compensation to plaintiff. Examples of such materials are shown in paragraphs 21-27, above.

27. Adobe's ongoing actions are done with specific intent to directly infringe, or actively induce infringement of one or more claims of each of the patents-in-suit.

28. Mr. Richardson is the owner of the patents-in-suit.

29. Adobe has not obtained a license to any of the patents-in-suit.

30. Adobe does not have Mr. Richardson's permission to make, use, sell, offer to sell, imports or exports products or otherwise engage in practices that are covered by one or more claims of any of the patents-in-suit.

31. Adobe needs to obtain a license to the patents-in-suit and cease its ongoing infringement.

32. Mr. Richardson has been and continues to be damaged as a result of Adobe's infringing conduct.

33. The patents-in-suit have been enforced in litigations and have been licensed to numerous licensees.

COUNT I
(INFRINGEMENT OF U.S. PATENT NO. 7,388,587)

34. Plaintiff incorporates paragraphs 1 through 33 herein by reference.

35. This cause of action arises under the patent laws of the United States, and in particular, 35 U.S.C. §§ 271, *et seq.*

36. The '587 patent, entitled "Method For Embedding Animation In Electronic Mail And Websites," duly and legally issued on June 17, 2008.

37. The inventions claimed in the '587 patent relate to improved methods and computing products for creating animations for efficient electronic communications.

38. Plaintiff is owner of the '587 patent with all rights to the '587 patent, including the right to enforce, sue, and recover damages for past and future infringement. A true and correct

copy of the ’587 patent is attached hereto as Exhibit 1 and is incorporated by reference.

39. Each claim in the ’587 patent is presumed valid and directed to patent eligible subject matter.

40. Each claim in the ’587 patent claims patent-eligible subject matter under 35 U.S.C. § 101.

41. The ’587 patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

INDIRECT INFRINGEMENT--ACTIVE INDUCEMENT – 35 U.S.C. § 271(b))

42. Defendant has, and continues to, indirectly infringe one or more of claims 1, 3, 4, 5 and 6 of the ’587 patent by actively inducing direct infringement by others of the Accused Methods.

43. On information and belief, Adobe has known, or should have known of the ‘587 Patent.

44. On information and belief, despite having knowledge of the ’587 patent, Defendant specifically instructs and actively encourages others to practice the Accused Method in a manner that infringes the ’587 patent. For example, Defendant’s videos, and promotional, advertising, teach and encourage end users to practice the Accused Method to create infringing Cinemagraphs. *See, e.g.,* supra ¶¶ 20-27; see also, Plaintiff’s Infringement Contentions in a detailed Claim Comparison Chart comparing Claims 1, 3, 4, 5 and 6 of the ‘587 patent to the Accused Method, attached as Exhibit 2 and materials cited therein, filed with this Complaint.

45. Furthermore, Defendant has not provided any information or indication that it has implemented a design around or otherwise taken any remedial action with respect to the ’587 patent. In accordance with Fed. R. Civ. P. 11(b)(3), Plaintiff will likely have additional evidentiary support after a reasonable opportunity for discovery on this issue.

46. Defendant is liable for these infringements of the ’587 patent pursuant to 35 U.S.C. § 271 (b).

47. Upon information and belief, defendants’ conduct in infringing, by actively inducing infringement of the claims of the ‘587 patent, has been knowing, wanton and willful.

48. Plaintiff has been damaged as a result of Defendant’s infringing conduct described in this Count. Defendant is, thus, liable to Plaintiff for treble damages and Attorney’s fees, in an amount that adequately compensates Plaintiff for Defendant’s infringing acts, which, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

COUNT II
(INFRINGEMENT OF U.S. PATENT NO. 7,629,977)

49. Plaintiff incorporates paragraphs 1 through 48 herein by reference.

50. This cause of action arises under the patent laws of the United States, and in particular, 35 U.S.C. §§ 271, et seq.

51. The ’977 patent, entitled “Embedding Animation in Electronic Mail and Websites,” duly and legally issued on December 8, 2009.

52. The inventions claimed in the ’977 patent relate to improved methods and computing products for creating animations for efficient electronic communications.

53. Plaintiff is owner of the ’977 patent with all rights to the ’977 patent including the exclusive right to enforce, sue, and recover damages for past and future infringement. A true and correct copy of the ’977 patent is attached hereto as Exhibit 3 and is incorporated by reference.

54. Each claim in the ’977 patent is presumed valid and directed to patent eligible subject matter.

55. Each claim in the ’977 patent claims patent-eligible subject matter under 35 U.S.C. § 101.

56. The ’977 patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

INDIRECT INFRINGEMENT--ACTIVE INDUCEMENT – 35 U.S.C. § 271(b))

57. Defendant has, and continues to, directly infringe one or more claims of the ’977 patent in this judicial district and elsewhere in New York and the United States.

58. In particular, Defendant has, and continues to, infringe at least one or more of claims 1, 2-4, 5, 6 and 8 of the ’977 patent by actively inducing direct infringement by others of the Accused Methods.

59. On information and belief, Adobe has known, or should have known of the ‘977 Patent.

60. On information and belief, despite having knowledge of the ’977 patent, Defendant specifically instructs and actively encourages others to practice the Accused Method in a manner that infringes claims 1, 2-4, 5, 6 and 8 of the ’977 patent. For example, Defendant’s videos, and promotional, advertising teach and encourage end users to practice the Accused Method to create infringing Cinemagraphs. See, e.g., supra ¶¶ 20-27; see also, Plaintiff’s Infringement Contentions in a detailed Claim Comparison Chart comparing claims 1, 2-4, 5, 6 and 8 of the ’977 patent to the Accused Method, attached as Exhibit 4 and materials cited therein, filed with this Complaint.

61. Furthermore, Defendant has not provided any information or indication that it has implemented a design around or otherwise taken any remedial action with respect to the ’977 patent. In accordance with Fed. R. Civ. P. 11(b)(3), Plaintiff will likely have additional evidentiary support after a reasonable opportunity for discovery on this issue.

62. Defendant is liable for these infringements of the ’977 patent pursuant to 35

U.S.C. § 271 (b).

63. Upon information and belief, defendants' conduct in infringing, by actively inducing infringement of the claims of the '977 patent has been knowing, wanton and willful.

64. Plaintiff has been damaged as a result of Defendant's infringing conduct described in this Count. Defendant is, thus, liable to Plaintiff in an amount that adequately compensates Plaintiff for Defendant's infringing acts, which, due to defendant's knowing, wanton and willful acts may be trebled and Attorney's fees awarded under 35 U.S.C. §§ 284 and 285, but cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

COUNT III
(INFRINGEMENT OF U.S. PATENT NO. 8,035,644)

65. Plaintiff incorporates paragraphs 1 through 64 herein by reference.

66. This cause of action arises under the patent laws of the United States, and in particular, 35 U.S.C. §§ 271, et seq.

67. The '644 patent, entitled "Method for Embedding Animation in Electronic Mail and Websites," duly and legally issued on October 11, 2011.

68. The inventions claimed in the '644 patent relate to a Method for Embedding Animation in Electronic Mail and Websites (the "Accused Method") and an Electronic Message which contains a Cinemagraph (the "Accused Product").

69. Plaintiff is the owner of the '644 patent with all rights to the '644 patent including the exclusive right to enforce, sue, and recover damages for past and future infringement. A true and correct copy of the '644 patent is attached hereto as Exhibit 5 and is incorporated by reference.

70. Each claim in the '644 patent is presumed valid and directed to patent eligible

subject matter.

71. Each claim in the ’644 patent claims patent-eligible subject matter under 35 U.S.C. § 101.

72. The ’644 patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

DIRECT INFRINGEMENT (35 U.S.C. § 271(a))

73. Defendant has, and continues to, directly infringe one or more claims of the ’644 patent in this judicial district and elsewhere in New York and the United States.

74. On information and belief, Adobe has known, or should have known of the ‘644 Patent.

75. On information and belief, despite having knowledge of the ’644 patent, Defendant has, and continues to, infringe at least one or more of claims 8, 10 and 12 of the ’644 patent by, among other things, making, using, offering to sell, selling, importing or exporting the Accused Products into the United States.

76. In particular, Defendant has, and continues to, infringe at least one or more of claims 8, 10 and 12 of the ’644 patent by hosting an electronic message containing cinemagraphs on their website, embedding Cinemagraphs in electronic communications (email) and on their webpage and importing, exporting and selling the Accused Products using electronic communications containing cinemagraphs from their website.

77. On information and belief, despite having knowledge of the ’644 patent, Defendant promotes the Accused Products on the Google Search engine and upon information and belief, sells the Accused Products at a high volume, hosting the Accused Products on their website and sending them in electronic communications to purchasers, inside and outside of the United States, thereby directly infringing claims 8, 10 and 12 of the ’644 patent. See, e.g., supra ¶¶ 15-19;

see also, Plaintiff's Infringement Contentions in a detailed Claim Comparison Chart comparing claims 8, 10 and 12 of the '644 patent to the Accused Products, attached as Exhibit 6 and materials cited therein, filed with this Complaint.

78. Furthermore, Defendant has not provided any information or indication that it has implemented a design around or otherwise taken any remedial action with respect to the '644 patent. In accordance with Fed. R. Civ. P. 11(b)(3), Plaintiff will likely have additional evidentiary support after a reasonable opportunity for discovery on this issue.

79. Defendant is liable for these infringements of the '644 patent pursuant to 35 U.S.C. § 271 (a).

80. Upon information and belief, defendants' conduct in infringement of the claims of the '644 patent has been knowing, wanton and willful.

81. Plaintiff has been damaged as a result of Defendant's infringing conduct described in this Count.

82. Defendant is, thus, liable to Plaintiff in an amount that adequately compensates Plaintiff for Defendant's infringing acts, which, due to defendant's knowing, wanton and willful acts may be trebled and Attorney's fees awarded under 35 U.S.C. §§ 284 and 285, but cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

INDIRECT INFRINGEMENT (INDUCEMENT – 35 U.S.C. § 271(b))

83. Based on the information presently available to Plaintiff, absent discovery, and in the alternative to direct infringement, Plaintiff contends that Defendant has, and continues to, indirectly infringe one or more claims of the '644 patent by inducing direct infringement by users of the Accused Methods.

84. In particular, Defendant has, and continues to, infringe at least one or more of claims 1, 2, 3, 5, and 6 of the ’644 patent by actively inducing direct infringement by others of the Accused Methods.

85. On information and belief, Adobe has known, or should have known of the ‘644 Patent.

86. On information and belief, despite having knowledge of the ’644 patent, Defendant specifically instructs and actively encourages others to practice the Accused Method in a manner that infringes claims 1, 2, 3, 5, and 6 of the ’644 patent. For example, Defendant’s videos, and promotional, advertising, teach and encourage end users to practice the Accused Method to create infringing Cinemagraphs. See, e.g., supra ¶¶ 20-27; see also, Plaintiff’s Infringement Contentions in a detailed Claim Comparison Chart comparing claims 1, 2, 3, 5, and 6 of the ’644 patent to the Accused Method, attached as Exhibit 6 and materials cited therein, filed with this Complaint.

87. Furthermore, Defendant has not provided any information or indication that it has implemented a design around or otherwise taken any remedial action with respect to the ’644 patent. In accordance with Fed. R. Civ. P. 11(b)(3), Plaintiff will likely have additional evidentiary support after a reasonable opportunity for discovery on this issue.

88. Defendant is liable for these infringements of the ’644 patent pursuant to 35 U.S.C. § 271 (b).

89. Upon information and belief, defendants’ conduct in infringing, by actively inducing infringement of the claims of the ‘644 patent, has been knowing, wanton and willful.

90. Defendant is, thus, liable to Plaintiff in an amount that adequately compensates Plaintiff for Defendant’s infringing acts, which, due to defendant’s knowing, wanton and willful acts may be trebled and Attorney’s fees awarded under 35 U.S.C. §§ 284 and 285, but cannot be

less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

COUNT IV (INFRINGEMENT OF U.S. PATENT NO. 11,232,768)

91. Plaintiff incorporates paragraphs 1 through 90 herein by reference.

92. This cause of action arises under the patent laws of the United States, and in particular, 35 U.S.C. §§ 271, et seq.

93. The '768 patent, entitled "Embedding Animation in Electronic Mail, Text Messages and Websites," duly and legally issued on January 25, 2022.

94. The inventions claimed in the '768 patent relate to a Method for Embedding Animation in Electronic Mail and Websites (the "Accused Method").

95. Plaintiff is the owner of the '768 patent with all rights to the '768 patent including the exclusive right to enforce, sue, and recover damages for past and future infringement. A true and correct copy of the '768 patent is attached hereto as Exhibit 7 and is incorporated by reference.

96. Each claim in the '768 patent is presumed valid and directed to patent eligible subject matter.

97. Each claim in the '768 patent claims patent-eligible subject matter under 35 U.S.C. § 101.

98. The '768 patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

INDIRECT INFRINGEMENT (INDUCEMENT – 35 U.S.C. § 271(b))

99. Based on the information presently available to Plaintiff, absent discovery, and in

the alternative to direct infringement, Plaintiff contends that Defendant has, and continues to, indirectly infringe one or more claims of the ’768 patent by inducing direct infringement by users of the Accused Methods.

100. In particular, Defendant has, and continues to, infringe at least one or more of claims 1, 4, 7, 15, and 17 of the ‘768 patent by actively inducing direct infringement by others of the Accused Methods.

101. On information and belief, Adobe has known, or should have known of the ‘768 Patent.

102. On information and belief, despite having knowledge of the ’768 patent, Defendant specifically instructs and actively encourages others to practice the Accused Method in a manner that infringes claims 1, 4, 7, 15, and 17 of the ’768 patent. For example, Defendant’s videos, and promotional advertising, teach and encourage end users to practice the Accused Method to create infringing Cinemagraphs. See, e.g., supra ¶¶ 20-27; see also, Plaintiff’s Infringement Contentions in a detailed Claim Comparison Chart comparing claims 1, 4, 7, 15, and 17 of the ’768 patent to the Accused Method, attached as Exhibit 8 and materials cited therein, filed with this Complaint.

103. Furthermore, Defendant has not provided any information or indication that it has implemented a design around or otherwise taken any remedial action with respect to the ’768 patent. In accordance with Fed. R. Civ. P. 11(b)(3), Plaintiff will likely have additional evidentiary support after a reasonable opportunity for discovery on this issue.

104. Defendant is liable for these infringements of the ’768 patent pursuant to 35 U.S.C. § 271 (b).

105. Upon information and belief, defendants’ conduct in infringing, by actively inducing infringement of the claims of the ‘768 patent, has been knowing, wanton and willful.

106. Defendant is, thus, liable to Plaintiff in an amount that adequately compensates Plaintiff for Defendant's infringing acts, which, due to defendant's knowing, wanton and willful acts may be trebled and Attorney's fees awarded under 35 U.S.C. §§ 284 and 285, but cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

COUNT V (INFRINGEMENT OF U.S. PATENT NO. 11,263,998)

107. Plaintiff incorporates paragraphs 1 through 106 herein by reference.

108. This cause of action arises under the patent laws of the United States, and in particular, 35 U.S.C. §§ 271, et seq.

109. The '998 patent, entitled "Embedding Animation in Electronic Mail, Text Messages and Websites," duly and legally issued on March 1, 2022.

110. The inventions claimed in the '998 patent relate to a Method for Embedding Animation in Electronic Mail and Websites (the "Accused Method") and Electronic Messages and Websites which contain a Cinemagraph (the "Accused Product").

111. Plaintiff is the owner of the '998 patent with all rights to the '998 patent including the exclusive right to enforce, sue, and recover damages for past and future infringement. A true and correct copy of the '998 patent is attached hereto as Exhibit 9 and is incorporated by reference.

112. Each claim in the '998 patent is presumed valid and directed to patent eligible subject matter.

113. Each claim in the '998 patent claims patent-eligible subject matter under 35 U.S.C. § 101.

114. The '998 patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

DIRECT INFRINGEMENT (35 U.S.C. § 271(a))

115. Defendant has, and continues to, directly infringe one or more claims of the ’998 patent in this judicial district and elsewhere in New York and the United States.

116. On information and belief, Adobe has known, or should have known of the ‘998 Patent.

117. On information and belief, despite having knowledge of the ’998 patent, Defendant has, and continues to, infringe at least one or more of claims 1-7 of the ’998 patent by, among other things, making, using, offering to sell, selling, importing or exporting the Accused Products into the United States.

118. In particular, Defendant has, and continues to, infringe at least one or more of claims 1-7 of the ’998 patent by hosting an electronic message containing cinemagraphs on their website, embedding Cinemagraphs in electronic communications (email) and on their webpage and importing, exporting and selling the Accused Products using electronic communications containing cinemagraphs from their website.

119. On information and belief, despite having knowledge of the ’998 patent, Defendant promotes the Accused Products on the Google Search engine and upon information and belief, sells the Accused Products at a high volume, hosting the Accused Products on their website and sending them in electronic communications to purchasers, inside and outside of the United States, thereby directly infringing claims 1-7 of the’998 patent. See, e.g., supra ¶¶ 15-19; see also, Plaintiff’s Infringement Contentions in a detailed Claim Comparison Chart comparing claims 1-7 of the’998 patent to the Accused Products, attached as Exhibit 10 and materials cited therein, filed with this Complaint.

120. Furthermore, Defendant has not provided any information or indication that it has implemented a design around or otherwise taken any remedial action with respect to the ’998

patent. In accordance with Fed. R. Civ. P. 11(b)(3), Plaintiff will likely have additional evidentiary support after a reasonable opportunity for discovery on this issue.

121. Defendant is liable for these infringements of the ’998 patent pursuant to 35 U.S.C. § 271 (a).

122. Upon information and belief, defendants’ conduct in infringement of the claims of the ‘998 patent has been knowing, wanton and willful.

123. Plaintiff has been damaged as a result of Defendant’s infringing conduct described in this Count.

124. Defendant is, thus, liable to Plaintiff in an amount that adequately compensates Plaintiff for Defendant’s infringing acts, which, due to defendant’s knowing, wanton and willful acts may be trebled and Attorney’s fees awarded under 35 U.S.C. §§ 284 and 285, but cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

INDIRECT INFRINGEMENT (INDUCEMENT – 35 U.S.C. § 271(b))

125. Based on the information presently available to Plaintiff, absent discovery, and in the alternative to direct infringement, Plaintiff contends that Defendant has, and continues to, indirectly infringe one or more claims of the ’998 patent by inducing direct infringement by users of the Accused Methods.

126. In particular, Defendant has, and continues to, infringe at least one or more of claims 8-14 of the ’998 patent by actively inducing direct infringement by others of the Accused Methods.

127. On information and belief, Adobe has known, or should have known of the ‘998 Patent.

128. On information and belief, despite having knowledge of the ’998 patent, Defendant specifically instructs and actively encourages others to practice the Accused Method in a manner that infringes claims 8-14 of the ’998 patent. For example, Defendant’s videos, and promotional advertising, teach and encourage end users to practice the Accused Method to create infringing Cinemagraphs. See, e.g., supra ¶¶ 20-27; see also, Plaintiff’s Infringement Contentions in a detailed Claim Comparison Chart comparing claims 8-14 of the ’998 patent to the Accused Method, attached as Exhibit 10 and materials cited therein, filed with this Complaint.

129. Furthermore, Defendant has not provided any information or indication that it has implemented a design around or otherwise taken any remedial action with respect to the ’998 patent. In accordance with Fed. R. Civ. P. 11(b)(3), Plaintiff will likely have additional evidentiary support after a reasonable opportunity for discovery on this issue.

130. Defendant is liable for these infringements of the ’998 patent pursuant to 35 U.S.C. § 271 (b).

131. Upon information and belief, defendants’ conduct in infringing, by actively inducing infringement of the claims of the ‘998 patent, has been knowing, wanton and willful.

132. Defendant is, thus, liable to Plaintiff in an amount that adequately compensates Plaintiff for Defendant’s infringing acts, which, due to defendant’s knowing, wanton and willful acts may be trebled and Attorney’s fees awarded under 35 U.S.C. §§ 284 and 285, but cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

JURY DEMAND

Plaintiff requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

Plaintiff asks that the Court find in its favor and against Defendant and that the Court grant Plaintiff the following relief:

a. Judgment that one or more claims of each patent-in-suit have been infringed directly and/or indirectly, literally and/or under the doctrine of equivalents, by Defendants;

b. Judgment that Defendants account for and pay to Plaintiff all damages and costs incurred by Plaintiff because of Defendant's infringing activities and other conduct complained of herein, including an accounting for any sales or damages not presented at trial; in an amount which has not yet been determined, but is believed to be in excess of $5,000,000.00;

c. Judgment that Defendants acts of infringement are knowing, willful and wanton;

d. Judgment that Defendants account for and pay to Plaintiff a reasonable, ongoing, post judgment royalty because of Defendant's infringing activities, including continuing infringing activities, and other conduct complained of herein;

e. Judgment that Defendants pay treble (3x) damages, Plaintiff's costs and Plaintiff's reasonable attorneys' fees, due to the knowing, willful and wanton infringement by Defendants of the claims of Plaintiff's patents-in-suit;

f. That Plaintiff be granted pre-judgment and post judgment interest on the damages caused by Defendants' infringing activities and other conduct complained of herein; and

g. That Plaintiff be granted such other and further relief as the Court may deem just and proper under the circumstances.

Respectfully submitted,

Dated: August 19, 2022

/Alan M. Sack/

Alan M. Sack (NY Bar #1929538)
SACK IP Law p.c.

445 Park Avenue
9th Floor
New York, NY 10022
Tel: (212) 500-1310

6800 Jericho Tpk.
Suite 120W
Syosset, NY 11791
Tel: (516) 393-5960

Direct Cell: (516) 510-3061
Email: Alan.Sack@sack-ip.com
Attorneys for Plaintiff, Douglas G. Richardson