

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

VALIDITY, INC.,)	
)	
Plaintiff,)	
)	
v.)	C. A. No.
)	
PROJECT BORDEAUX, INC.,)	JURY TRIAL DEMANDED
)	
Defendant.)	
)	

COMPLAINT

Validity, Inc. (“Plaintiff” or “Validity”) as and for its Complaint against Project Bordeaux, Inc. (“Defendant” or “Bordeaux”), states and alleges as follows:

THE PARTIES

1. Validity is a corporation existing and organized under the laws of Delaware with its principal place of business at 100 Summer Street, Suite 2900, Boston, Massachusetts 02110.
2. Defendant is a limited liability corporation existing and organized under the laws of Delaware and has a place of business at 9935-D Rea Road, #234, Charlotte, North Carolina 28277.
3. On information and belief, Defendant is doing business as “Inbox Monster.” Ex. A at p. 1 (<https://inboxmonster.com/privacy-policy/>).

NATURE AND BASIS OF ACTION

4. This is an action for infringement of United States Patent No. 8,719,356 entitled “Methods, Systems, and Computer Readable Media for Monitoring Deliverability of Electronic Mail Based on Subscriber and Seed Deliverability Data” (hereinafter, “the ‘356 Patent”). A true and correct copy of the ‘356 Patent is attached hereto as Exhibit B.

5. Validity brings this Action under the patent laws of the United States to obtain a judgment of infringement, damages for past infringement, and an injunction against further sales of all infringing products in perpetuity, together with other relief as provided by law, including attorneys' fees.

6. Validity alleges that Defendant: (1) directly infringes one or more claims of the '356 Patent; (2) induces at least its customers to infringe the '356 Patent; and (3) contributes to infringement of one or more claims of the '356 Patent by its sale, offer for sale, and/or importation of at least Inbox Monster.

JURISDICTION AND VENUE

7. This Action arises under the patent laws of the United States, Title 35 of the United States Code. Accordingly, this Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338.

8. This Court has personal jurisdiction over Defendant because Defendant is a Delaware corporation and because Defendant conducts, and has conducted, continuous, systematic, substantial, and routine business within Delaware, including, but not limited to, offering products and services for sale in Delaware.

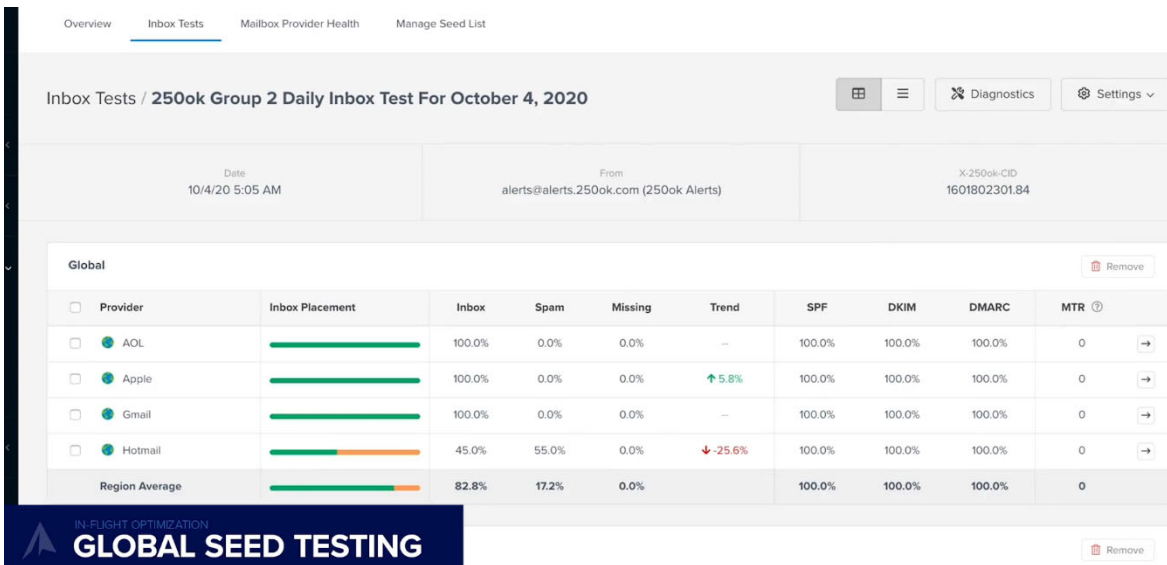
8. Venue in this Court is proper under 28 U.S.C. § 1391 and 28 U.S.C. § 1400 because Defendant is a Delaware corporation.

VALIDITY'S INNOVATIVE EMAIL DELIVERABILITY SOLUTIONS

8. Validity provides a variety of services that allow businesses to increase email engagement, increase sales productivity, and simplify data management. Tens of thousands of organizations have relied on Validity's innovative services to manage their customer data and improve customer engagement.

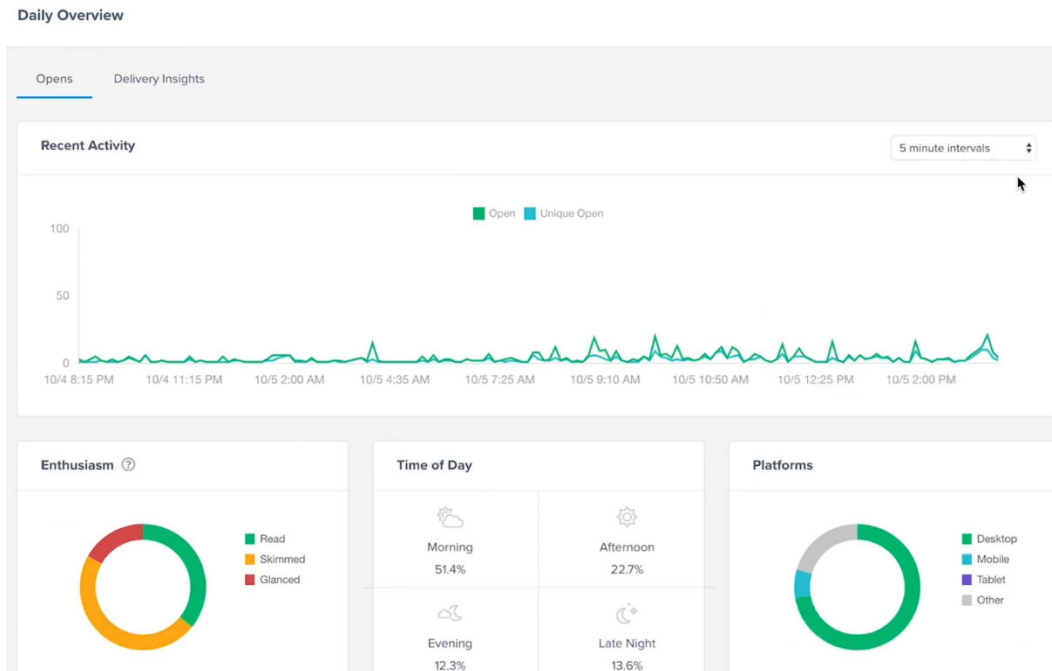
9. Validity’s Everest offering (“Everest”) is an email deliverability platform that provides crucial insights and guidance to allow its customers to reach more people, increase engagement, and protect their email performance. Everest allows its customers to maximize email deliverability with inbox placement insights, sender reputation and infrastructure monitoring, integrated list validity, and a sender certification program. These features enable customers to deliver more messages to more people, stand out in a crowded inbox, and detect and solve deliverability threats.

10. Everest’s Inbox Placement Insights feature provides comprehensive insights into inbox placement rates to accurately measure performance, fix issues, and keep emails out of the spam folder to get more email messages to more people. Using the largest global seed list in the industry, Everest allows senders to determine if a message went to an inbox, a spam folder, or otherwise undelivered.

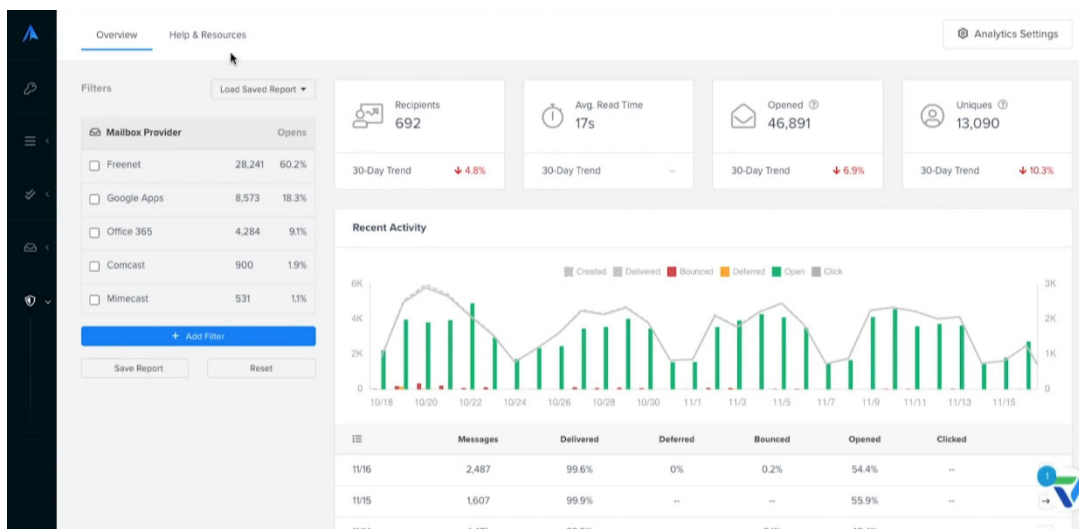


11. Everest’s Engagement Analytics feature provides detailed engagement insights and analytics for a more defined view of message recipients and how they interact with content. For example, Everest allows senders to see what time of days emails were opened, what devices they

were opened on, and how long recipients looked at them.



12. Everest allows customers to view and quickly understand metrics using an interface that combines data from various sources. For example, a user can see, among other things, email opens, clicks, average read time, and other metrics.



13. Everest practices one or more claims of the '356 patent.

<https://www.validity.com/intellectual-property/>.

THE ACCUSED INSTRUMENTALITY – INBOX MONSTER

14. Defendant makes, uses, sells, and/or offers to sell in the United States email deliverability monitoring products and services, including products and methods Defendant has and continues to make, use, sell, offer for sale, and/or perform under the name “Inbox Monster” (“Inbox Monster” or the “Accused Instrumentality”). Ex. A at p. 1 (<https://inboxmonster.com/privacy-policy/>).

15. As described on the Inbox Monster website, Inbox Monster monitors deliverability of electronic mail.

ANALYZE

Deliverability Monitoring

Data and insights are the foundation of everything that we do. Unlimited seed testing at over 90 ISPs worldwide. Aggregation of over 10 million spam traps. Get an incredible depth of intelligence on your program’s deliverability to help you make proactive decisions.

Ex. C at p. 7 (<https://inboxmonster.com>)

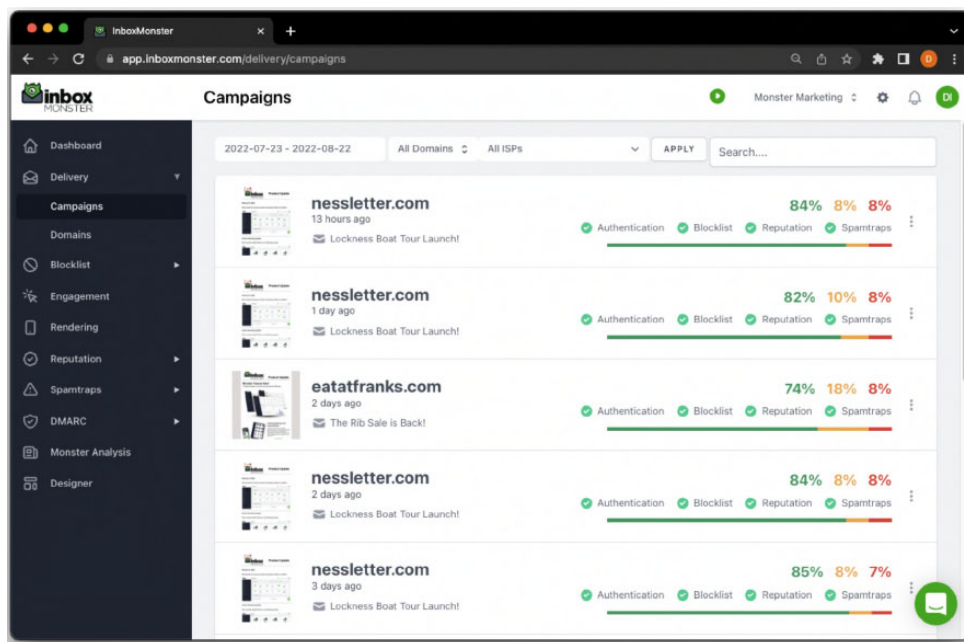
16. Inbox Monster receives seed deliverability data that includes information indicating a number of email messages associated with an email campaign that are delivered to a folder associated with one or more intended recipients of the email campaign. For example, Inbox Monster’s help website instructs users how to generate an inbox placement test by downloading a seed list.

Pre-Campaign Test: Log into your ESP, select the domain and content you'd like to test, and send an email to Inbox Monster's seedlist only. This email will generate an inbox placement test and the predictive analysis will be available for review in your Inbox Monster account. Creating a pre-campaign placement test generates predictive insights you can use to improve the performance of your next campaign.

In-line Campaign Test: You can also create an inbox placement test by adding Inbox Monster's seedlist to your next production campaign. While **pre-campaign** and **in-line** tests provide the same insights, you won't be able to use placement test analysis to improve campaign performance as both the in-line test and production campaign will have been sent at the same time.

Ex. D at p. 2 (<https://intercom.help/inbox-monster/en/articles/5759958-everything-about-inbox-placement-tests>).

17. Inbox Monster determines and displays certain metrics based on seed data, such as those shown below for individual email campaigns.



Ex. D at p. 4; *see also* Ex. E (<https://intercom.help/inbox-monster/en/articles/6406039-basic-reporting-inbox-placement-tests>); Ex. F (<https://intercom.help/inbox-monster/en/articles/6998231-isp-management-for-inbox-placement>); Ex. G (<https://intercom.help/inbox-monster/en/articles/7013713-campaign-reports-from-inbox>).

[monster](#)).

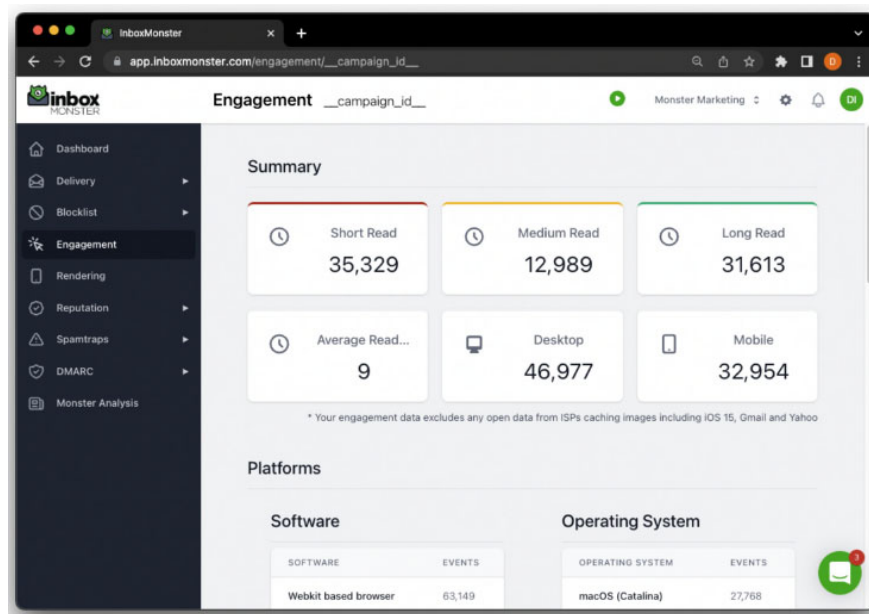
18. Inbox Monster receives subscriber deliverability data that includes information indicating a number of email messages associated with the email campaign that are delivered to a folder associated with the one or more intended recipients of the email campaign. For example, Inbox Monster’s help website describes an “Engagement Pixel” feature as follows:

Engagement Pixel

Using a 1x1, invisible pixel within email campaigns sent to real subscribers, the Inbox Monster platform is able to provide a variety of behavioural data that enables marketers with a greater understanding of how their subscribers engage with their content.

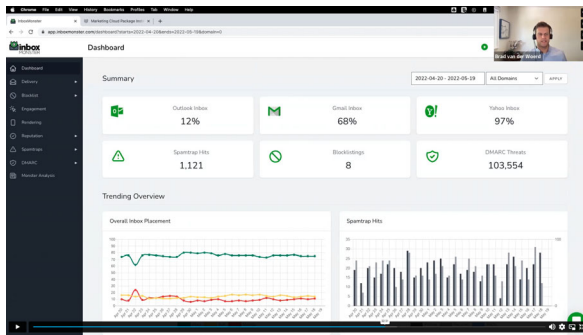
Ex. H at p. 1 (<https://intercom.help/inbox-monster/en/articles/6345314-engagement-pixel-setup-and-reporting>).

19. Inbox Monster receives information via the Engagement Pixel indicating a number of email messages associated with the email campaign that are delivered to a folder associated with the one or more intended recipients of the email campaign.

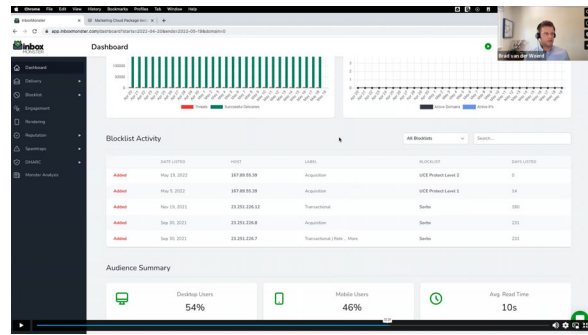


Ex. H at p. 5; *see also* Ex. J (<https://sendgrid.com/blog/ask-the-expert-brad-van-der-woerd/>).

20. Inbox Monster determines one or more deliverability metrics based on seed deliverability data and subscriber deliverability data. For example, Inbox Monster includes a “Dashboard” including one or more metrics determining based on seed deliverability data and subscriber deliverability data.



(<https://vimeo.com/745551037>) (screenshot at 32:31)



(<https://vimeo.com/745551037>) (screenshot at 32:25)

21. On or around November 16, 2022, counsel for Validity sent a letter addressed to Matthew McFee, who on information and belief is Defendant’s Managing Partner, providing notice of the ‘356 patent, detailing the manner of Inbox Monster’s infringement of one or more claims of the ‘356 patent, and demanding that Inbox Monster cease and desist all infringing activities.

THE ‘356 PATENT

22. On May 6, 2014, the United States Patent and Trademark Office duly and legally issued the ‘356 patent.

23. The ‘356 patent is currently in full force and effect.

24. As explained in the ‘356 patent’s description of the related art, bulk senders of email messages “often send a larger number of copies of an email message to many different recipients as part of an ‘email campaign’” that “target[s] a specific set of recipients” and is “designed to achieve a particular goal.” Ex. B at 1:15-21. The ‘356 patent recognized that “it is desirable for

the sender to be able to measure the effectiveness of that email campaign through monitoring various deliverability statistics for the email messages associated with a campaign,” such as, for example, “an indication of the number, or percentage, or intended recipients who actually received the email in their inboxes as a proportion of the total number of intended recipients of the campaign.” *Id.*, 1:16-26.

25. The ‘356 patent identifies several technological problems that plagued prior methods and systems for determining the success of an email campaign. For example, one approach to attempt to determine the success of an email campaign involved the sender creating seed email accounts associated with different email services (e.g., different Internet service providers or ISPs), including those seed email accounts in their campaign, and then monitoring those seed email accounts as samples to determine how the email campaign messages were delivered. Ex. B at 1:31-38.

26. The ‘356 patent recognized several drawbacks and limitations of the conventional seed email account approach. For example, seed data can only provide a statistical result derived from a small sample of email addresses. *Id.* at 1:38-40. Because seed email accounts are not assigned to actual human users (e.g., meaning that the account is not used to send, open, click through, or forward an email; is used not to subscribe to information lists; is not given to third parties; and cannot be added to an address book), the seed email accounts cannot provide “‘engagement’ metrics which could impact folder placement of messages.” *Id.* at 1:41-48. In other words, seed email accounts “may not be representative of actual email accounts.” *Id.* at 1:48-50.

27. The ‘356 patent also recognized that other prior attempts to measure the success of email campaigns used data associated with actual recipients of the email campaign instead of seed

data. Ex. B at 1:51-53. Data from actual recipients conventionally was obtained directly from large ISPs (e.g., Yahoo!, Gmail, AOL, Hotmail, etc.). *Id.* at 1:53-55. The ‘356 patent recognized that ISPs were “increasingly filtering email using individual user-level settings, which take into account user behavior, such as engagement with the email (e.g., opened, deleted, read, etc).” *Id.* at 1:59-63.

28. The ‘356 patent recognized that one technological “drawback to using subscriber data only is that the visibility of a sender’s email campaign may be limited or . . . the subscriber data may not be representative of all intended recipients.” *Id.* at 1:64-67. When data is “only available from a few large ISPs, there is often not enough subscriber data to provide comprehensive monitoring of all of the ISPs that may be associated with the intended recipients of the campaign.” *Id.* at 1:67-2:4. Another technological “drawback is that identifying which campaigns are important from a list of campaigns is difficult,” especially where “a sender might receive a large number of non-important campaigns to sift through” and evaluate. *Id.* at 2:6-8. Yet another technological drawback to this approach is that “while subscriber data can only show folder placement data (e.g., inbox or bulk) if the email was placed in a recipient’s mailbox, seed data can show ‘missing’ emails.” *Id.* at 2:8-11. Thus, in situations where “there is a full block at the ISP,” this “would result in zero subscriber data being available.” *Id.* at 2:12-14.

29. The ‘356 patent identifies the approach discussed in U.S. Patent Publication No. 2009/0077182 (“Banjara”) as a specific illustration of the challenges faced in prior email campaign monitoring systems and methods. Ex. B at 2:14-16. Banjara describes “a system and method for identifying email campaigns using special custom email message headers, called x-headers.” *Id.* at 2:16-18. In this approach, the sender adds an identifying x-header to the email and asks the ISP of the recipient “whether the ISP blocked any emails with a specified x-header.” *Id.* at 2:19-23.

The ‘356 patent recognized that “[o]ne significant limitation of this x-header based system is that it requires coordination between the email sender, the ISPs of the recipients, and a specialized email delivery services provider employed by the sender.” *Id.* at 2:23-27. In addition, in Banjara’s approach, “[a]ll parties must also be informed about the content of the x-header in advance of the email campaign, and it cannot determine if emails were opened or simply diverted to a spam folder.” *Id.* at 2:27-30.

30. The ‘356 patent recognized “a need to overcome the shortcomings described above regarding subscriber-only deliverability data or seed-only deliverability data in order to achieve broader and more accurate monitoring of email marketing campaigns.” Ex. B at 2:32-35. The ‘356 patent discloses and claims technological solutions to at least the technological problems described above that plagued conventional approaches for monitoring email marketing campaigns.

31. FIG. 1 of the ‘356 patent illustrates an exemplary method for monitoring delivery of electronic mail based on subscribed and seed deliverability data. Ex. B at 4:42-45.

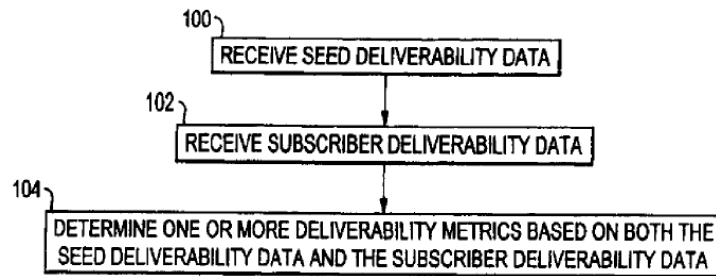


FIG. 1

Ex. B at FIG. 1

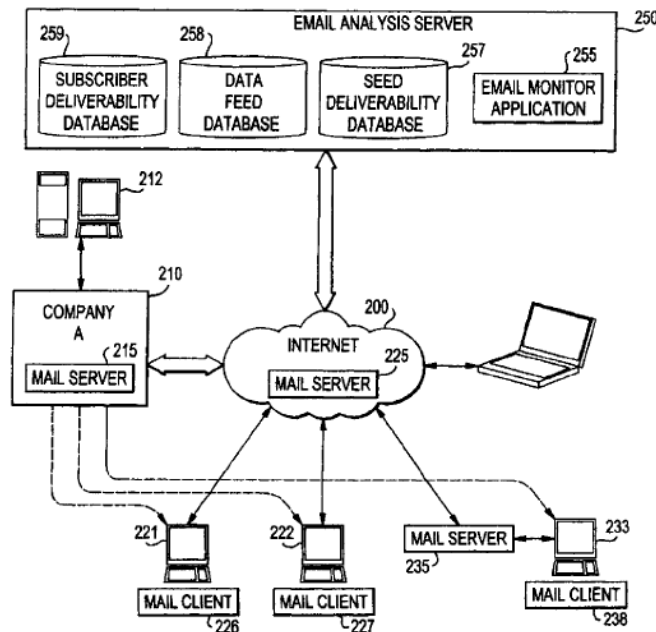
32. At step 100, seed deliverability data—which includes information indicating a number of email messages associated with an email campaign that are delivered to a folder associated with one or more intended recipients of the email campaign based on a sampling of seed accounts, where the seed accounts are not associated with an actual recipient of the email

campaign—is received. Ex. B at 4:45-52. At step 102, subscriber deliverability data—which includes information indicating a number of email messages associated with the email campaign that are delivered to a folder associated with the one or more intended recipients of the email campaign based on one or more subscriber accounts, where the seed accounts are associated with a subset of actual recipients of the email campaign—is received. *Id.* at 4:53-60. The ‘356 patent discloses an exemplary, detailed process for obtaining subscriber deliverability data. *See id.* at 4:61-6:60. At step 104, one or more deliverability metrics are determined based on the seed deliverability data and the subscriber deliverability data. *Id.* at 6:65-67.

33. The ‘356 patent discloses a variety of deliverability metrics. Ex. B at 6:67-7:16. Overall deliverability metrics can include an email sent metric, an email delivered metric, and/or an email inbox delivered metric, which can provide insight into the overall deliverability rates of a campaign. *Id.* at 7:17-34. As another example, an email conversion metric can be useful in cases where messages have a “call to action.” *Id.* at 7:35-42. Additional deliverability metrics include branding, long-term deliverability, and compliance, an email unsubscribe request metric, and an email complaint metric. *Id.* at 7:43-51.

34. FIG. 2 of the ‘356 patent discloses an exemplary system for monitoring email deliverability including an email analysis service 250, which includes, among other things, an email monitoring application 255, a seed deliverability database 257, a data feed database 258, and a subscriber deliverability database 259. Ex. B at 8:12-16, 9:3-5.

FIG. 2



Ex. B at FIG. 2

35. The seed deliverability database 257 is configured for receiving and storing the seed deliverability data described above in connection with FIG. 1. *Id.* at 9:6-13. The subscriber deliverability database 259 is configured for receiving and storing the subscriber deliverability data described above in connection with FIG. 1. *Id.* at 9:18-25. The email monitor application 255 is configured for determining one or more deliverability metrics based on the seed deliverability data and the subscriber deliverability data. *Id.* at 9:32-34. The email monitor application 255 may match a subscriber campaign to a seeded campaign by determining a list of matching IDs associated with the seeded campaign and matching the matching IDs with the subscriber campaign, for example, in real-time or near real-time. *Id.* at 9:40-45. The email monitor application 255 can also be configured to display the deliverability metrics. *Id.* at 9:46-47.

36. FIG. 3 of the '356 patent discloses an exemplary deliverability dashboard application for displaying subscriber and seed deliverability data. Ex. B at 9:64-67. The displayed

deliverability metrics allow an email campaign sender to analyze the success of the campaign, thereby solving the problems plaguing prior systems and methods described above.

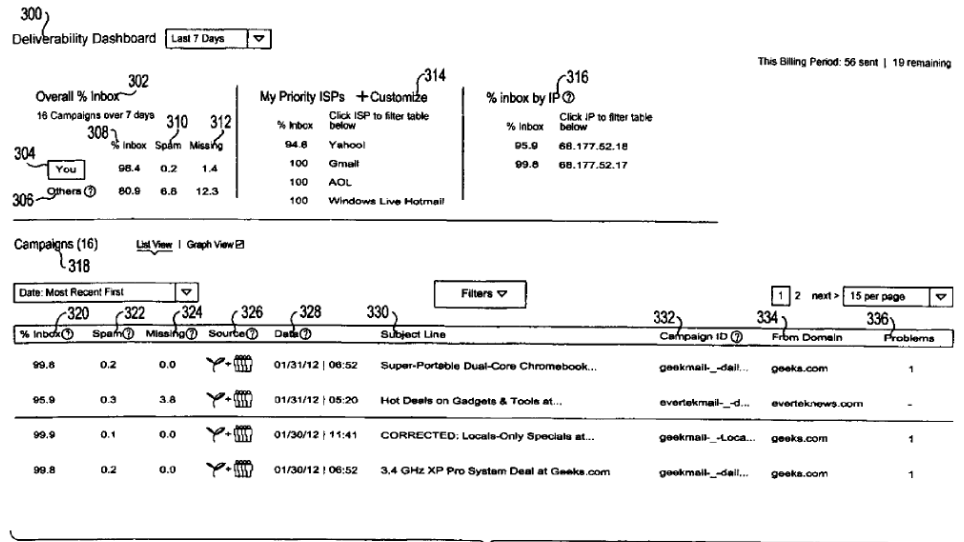


FIG. 3

Ex. B at FIG. 3

37. Screen portion 302 may indicate a summary of the user's 304 campaign(s) as compared with other users' 306 campaigns based on, for example, a percentage of emails that were delivered to intended recipients' inboxes in column 308, emails delivered to spam folders in column 310, or emails filtered by the ISP (i.e., missing) in column 312. Ex. B at 10:8-27. Screen portion 316 indicates a percentage of emails that reach recipients' inbox folders associated with IP addresses. *Id.* at 10:32-35. Screen portion 318 indicates information regarding any campaigns associated with the sender; for example, column 320 may indicate the percentage of emails that were delivered to recipients' inbox for each individual campaign, column 322 may indicate the percentage of emails that were delivered to recipients' spam folders for each individual campaign, and column 324 may indicate the percentage of emails that were automatically filtered by the recipients' ISP for each individual campaign. *Id.* at 10:36-44. Column 326 indicates whether the deliverability statistics displayed are based on subscriber data only, seed data only, or a

combination of subscriber and seed data. *Id.* at 10:45-11:3. Column 330 indicates a subject line associated with each email campaign, which may be important to senders and for analyzing why certain campaigns were more successful than others. *Id.* at 11:4-10. Column 332 includes a listing of the campaign ID, or matching ID, associated with each campaign. *Id.* at 11:11-29. Column 334 may indicate a sender domain associated with each campaign. *Id.* at 11:29-34. Column 336 may indicate if there are any problems associated with a campaign. *Id.* at 11:35-36

38. FIG. 4 of the '356 patent discloses an exemplary deliverability dashboard application for displaying deliverability data based on seed and subscriber data. Ex. B at 11:37-41.

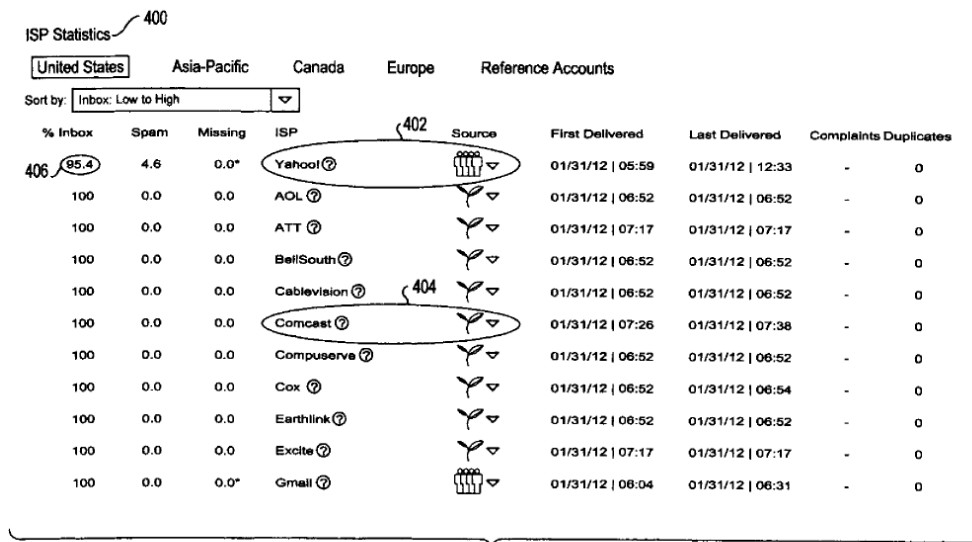


FIG. 4

Ex. B at FIG. 4

39. As shown above, the exemplary deliverability dashboard conveys various deliverability metrics to a user, including the percentage of emails that were delivered to recipients' inbox folders and the percentage of emails that were delivered to recipients' spam folders. *Id.* at 11:56-59.

40. The '356 patent issued with 21 claims covering different aspects of determining

and monitoring deliverability metrics. Independent claim 1 is reproduced below:

1. A method for monitoring deliverability of electronic mail based on subscriber and seed deliverability data, the method comprising:

receiving at a seed deliverability storage database, seed deliverability data that includes information indicating a number of email messages associated with an email campaign that are delivered to a folder associated with one or more intended recipients of the email campaign based on a sampling of seed accounts, wherein the seed accounts are not associated with human recipients of the email campaign;

receiving at a subscriber deliverability storage database, subscriber deliverability data that includes information indicating a number of email messages associated with the email campaign that are delivered to a folder associated with the one or more intended recipients of the email campaign based on one or more subscriber accounts, wherein the subscriber accounts are associated with a subset of actual recipients of the email campaign;

determining at a processor, one or more deliverability metrics based on the seed deliverability data and the subscriber deliverability data; and

matching at the processor a subscriber campaign to a seeded campaign by determining at the processor a list of matching IDs associated with the seeded campaign and matching at the processor the matching IDs with the seeded campaign.

41. Independent claim 12 of the '356 patent is reproduced below:

12. A system for monitoring deliverability of electronic mail based on subscriber and seed deliverability data, the system comprising:

a seed deliverability storage database for receiving and storing seed deliverability data that includes information indicating a number of email messages associated with an email campaign that are delivered to a folder associated with one or more intended recipients of the email campaign based on a sampling of seed accounts, wherein the seed accounts are not associated with actual recipients of the email campaign;

a subscriber deliverability storage database for receiving and storing subscriber deliverability data that includes information indicating a number of email messages associated with the email campaign that are delivered to a folder associated with the one or more intended recipients of the email campaign based on one or more subscriber accounts, wherein the subscriber accounts are associated with a subset of human recipients of the email campaign; and

a processor device configured to determine one or more deliverability metrics based on the seed deliverability data and the subscriber deliverability data, wherein the processor device is configured to match a subscriber campaign to a seeded campaign by

determining a list of matching IDs associated with the seeded campaign and matching the matching IDs with the seeded campaign.

42. These claimed features, among other claims in the '356 patent, offer multiple benefits and improvements compared to prior monitoring systems and methods. For example, the claimed features allow senders to monitor one or more deliverability metrics based on subscriber deliverability data and seed deliverability data. This allows for broader and more accurate monitoring of email campaigns than what was previously available prior to the inventions of the '356 patent.

43. The claims of the '356 patent recite limitations directed to employing unconventional technological solutions to the technological problems encountered by the prior deliverability monitoring systems and methods described above.

COUNT I
(INFRINGEMENT OF THE '356 PATENT)

44. Validity repeats and re-alleges the allegations set forth in the foregoing paragraphs as if fully set forth herein.

45. The claims of the '356 patent are valid and enforceable.

46. Validity is the owner of the entire right, title, and interest in and to '356 Patent. An assignment has been duly and properly recorded with the U.S. Patent and Trademark Office on or about February 4, 2022, at reel number 058889, frame number 0153.

47. Defendant, without authority or license from Validity, has made, used, offered to sell, sold, and/or imported into the United States the Accused Instrumentality.

48. Defendant has directly infringed and continues to directly infringe one or more claims of the '356 patent, both literally and under the doctrine of equivalents, by making, using, offering for sale, selling within the United States and imported into the United States, without

permission or license from Validity, the Accused Instrumentality that embodies or practices the inventions disclosed and claimed in the '356 patent in violation of 35 U.S.C. § 271(a).

49. Defendant directs or controls the performance by others of each step of such asserted method claims of the '356 patent, such that the performance of each step of the asserted method claims can be attributed to Defendant.

50. Defendant has been and is indirectly infringing the '356 patent by actively inducing or contributing to the direct infringement by others of the '356 patent, in the United States and this District.

51. Defendant actively induces direct infringement by others of one or more claims of the '356 patent, either literally or under the doctrine of equivalents, in violation of 35 U.S.C. § 271(b). For example, Defendant induces infringement of one or more claims of the '356 patent when end users operate the Accused Instrumentality in its intended manner.

52. The affirmative acts of inducement by Defendant include, but are not limited to, any one or a combination of encouraging and/or facilitating third-party infringement through the advertisement, marketing, and dissemination of the Accused Instrumentality and its components; and creating and publishing promotional and marketing materials, supporting materials, product manuals, and/or technical support and information relating to the Accused Instrumentality.

53. Defendant specifically intended and was aware that the ordinary and customary use of the Accused Instrumentality would infringe the the '356 patent.

54. Defendant knew that the induced conduct would constitute infringement, and intended said infringement at the time of committing the aforementioned acts, such that those acts and conduct have been and continue to be committed with the specific intent to induce infringement, or to deliberately avoid learning of the infringing circumstances at the time those

acts were committed, so as to be willfully blind to the infringement they induced.

55. Defendant took active steps to encourage end users to use and operate the Accused Instrumentality, despite knowing of the the '356 patent in the United States, in a manner it knew directly infringes each element of one or more claims of the '356 patent. Further, Defendant provided marketing materials and other technical information that cause its subscribers, customers, and other third parties to use and to operate the Accused Instrumentality for its ordinary and customary use, such that Defendant's customers and other third parties have directly infringed the '356 patent, through the normal and customary use of the Accused Instrumentality.

56. As examples of Defendant's infringement, attached as Exhibit L is a preliminary and exemplary claim chart detailing infringement of certain claims of the '356 patent. This claim chart is not intended to be limiting in any way on Validity's right to modify this and any other claim chart or allege other activities of Defendant infringe the '356 patent. Exhibit L is hereby incorporated by reference in its entirety. Each claim element in Exhibit L that is mapped to the Accused Instrumentality shall be considered an allegation within the meaning of the Federal Rules of Civil Procedure and therefore a response to each allegation is required. Validity will consider a responsive element-by-element claim chart to be sufficient.

57. Defendant has had knowledge of the '356 patent and was notified of its infringement thereof as early as November 16, 2022.

58. On information and belief, Defendant's infringement of the '356 patent is willful and deliberate in view of Defendant's knowledge of the '356 patent and the manner of its infringement since as early as November 16, 2022; and despite that knowledge, Defendant continues to directly infringe the '356 patent, actively induce third parties to directly infringe the '356 patent, and/or contribute to third parties' direct infringement of the '356 patent.

59. Validity is entitled to recover damages as a result of Defendant's infringement of the '356 patent, including lost profits and in no event less than a reasonable royalty, together with interest and costs as fixed by this Court pursuant to 35 U.S.C. § 284, in an amount to be proven at trial.

60. On information and belief, Defendant will continue its infringement of one or more claims of the '356 patent unless enjoined by the Court. Validity has been irreparably harmed by Defendant's infringement, and will be continue to be harmed unless and until the issuance of a permanent injunction against Defendant.

PRAYER FOR RELIEF

WHEREFORE, Validity prays for judgment and seeks the following relief:

a. For judgment that Defendant has infringed and continues to infringe one or more claims of the '356 patent, directly, and indirectly by both inducement of infringement and contributory infringement, in violation of the United States Code, including, without limitation, 35 U.S.C. § 271;

b. For an order enjoining Defendant, its officers, agents, servants, representatives, and employees, and all persons acting in concert with them, and each of them, from infringing the '356 patent;

c. For judgment awarding Validity damages adequate to compensate Validity for Defendant's past infringement, and any continuing or future infringement through the date such judgment is entered, including prejudgment and post-judgment interest, costs, expenses and an accounting of all infringing acts including, but not limited to, those acts not presented at trial;

d. For judgment that Defendant willfully infringed the '356 patent;

e. For judgment awarding enhanced damages to Validity in this case pursuant to 35

U.S.C. § 284;

f. For judgment that this case to be deemed an “exceptional case” under 35 U.S.C. § 285 and an award to Validity for its attorneys’ fees and costs incurred in bringing and prosecuting this action; and

g. For judgment awarding Validity such other and further relief as this Court deems just and proper.

JURY DEMAND

Validity demands trial of its claims for relief herein before a jury.

ASHBY & GEDDES

/s/ Andrew C. Mayo

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Attorneys for Plaintiff Validity, Inc.

Dated: March 30, 2023