



Motion”).) For the same reasons and pursuant to the same authority as cited in the Facebook Motion, the Court should dismiss the complaint against Photobucket.

## II. ARGUMENT

Pragmatus’ Complaint fails to satisfy the basic pleading standards under Federal Rule of Civil Procedure 8(a), as articulated in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009). For each of the asserted patents, Pragmatus’ direct and indirect infringement allegations against Photobucket are vague and conclusory claims that lack any supporting factual allegations. As to Photobucket, the Complaint merely identifies as the source of the supposed infringement “systems and services that allow users to upload, link to and comment on videos.” (Complaint at ¶¶ 48, 49, 52, 54, 56, 57.) These allegations against Photobucket are even more vague and conclusory than those made against Facebook, where the Complaint at least links the accused “systems and services” to operation of a “social network service.” The allegations against Photobucket do not include any explanatory factual allegations at all. As such, they do not give Photobucket fair notice of the claims against it and a reasonable opportunity to investigate and defend them.

The Supreme Court had made clear that a federal complaint must be “more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009)(citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). The complaint must plead “factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (citing *Twombly*, 550 U.S. at 556). Just as the Complaint’s allegations against Facebook are deficient by these standards, the allegations against Photobucket are deficient because they: (1) fail to give Photobucket sufficient notice of the allegedly infringing systems or services; (2) fail to identify the specific theory of

infringement that the plaintiff intends to pursue; (3) fail to allege that Photobucket had specific intent to induce infringement; (4) fail to identify any component especially made or adapted for use in an infringement of the asserted patents as required to support a contributory infringement claim; and (5) fail to allege that Photobucket had the requisite knowledge for contributory infringement liability.

Pragmatus' allegations against Photobucket, therefore, fail to state a claim for which relief can be granted for the same reasons set forth in Facebook's Motion and herein. Photobucket hereby adopts and incorporates by reference the arguments and authorities set forth in the Facebook Motion as if set forth herein.

### **III. CONCLUSION**

For the foregoing reasons, Photobucket respectfully requests that the Court dismiss the Complaint against it pursuant to Rule 12(b)(6), or in the alternative, require Pragmatus to provide a more definite statement pursuant to Rule 12(e).

Dated: January 7, 2011

Respectfully submitted,

*/s/ Kimberly S. Walker*

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **DEFENDANT PHOTOBUCKET.COM, INC.'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR A MORE DEFINITE STATEMENT** was electronically filed with the Clerk of the court using the CM/ECF system, which will send notification of such filing to the following email addresses on this 7<sup>th</sup> day of January, 2011.

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