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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

STREETSPACE, INC.,

Plaintiff,

v.

GOOGLE INC., et al.

Defendants.

Case No: 3:10-cv-01757-LAB-MDD

**DEFENDANTS' REPLY IN SUPPORT OF THEIR
 RULE 12(B)(6) MOTION TO DISMISS**

Date: May 9, 2011

Time: 11:15 a.m.

Judge: Hon. Larry Alan Burns

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1 **I. Introduction**

2 Contrary to plaintiff Streetspace’s Opposition (Dkt. No. 52), identification of accused
3 products is required to adequately plead direct infringement, and an allegation that Defendants
4 knew of the asserted patent before the filing of the original complaint is required to adequately
5 plead indirect infringement. Because Streetspace does not even attempt to include these required
6 allegations in its First Amended Complaint for Patent Infringement (“Amended Complaint”; Dkt.
7 No. 30), Streetspace’s claims of direct infringement against Millennial Media and Jumtap and
8 Streetspace’s claims of indirect infringement against all Defendants should be dismissed.

9 **II. Streetspace’s Direct Infringement Allegations Against Millennial Media and**
10 **Jumtap Should Be Dismissed Because They Fail to Adequately Identify Any**
11 **Accused Products**

12 Streetspace’s First Amended Complaint fails to specify which Millennial Media and
13 Jumtap services or product are accused of infringement in this case, which is a prerequisite for
14 stating a direct infringement claim under *Bell Atlantic Corp v. Twombly*, 550 U.S. 544 (2007)
15 and *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009). *Bender v. LG Elecs. U.S.A., Inc.*, No. C-09-
16 02114-JF, 2010 WL 889541, at *6 (N.D. Cal. Mar. 11, 2010) (requiring plaintiff to specifically
17 identify allegedly infringing products and finding list of product types to be insufficient).
18 Streetspace, however, misstates that the pleading requirements set out by the Supreme Court in
19 *Twombly* and *Iqbal* do not apply to its claims for direct patent infringement. Opp. at 3, 5. To the
20 contrary, courts routinely dismiss complaints for direct patent infringement for failure to meet
21 the *Twombly* and *Iqbal* pleading requirements. *See, e.g., Bender*, 2010 WL 889541, at *6
22 (“*Bender*’s infringement claim fails to provide a ‘plausible claim for relief’ under *Twombly* and
23 *Iqbal*”); *Interval Licensing LLC v. AOL, Inc.*, No. C10-1385, 2010 WL 5058620, at *3–4 (W.D.
24 Wash. Dec. 10, 2010) (applying *Twombly* and *Iqbal* in granting motion to dismiss plaintiff’s
25 complaint for direct patent infringement); *Friday Group v. Ticketmaster*, No. 4:08-CV-01203,
26 2008 WL 5233078, at *4 (E.D. Mo. Dec. 12, 2008) (same). Indeed, in the *Atwater* decision
27 relied on by Streetspace—and unlike in Streetspace’s First Amended Complaint—the complaint
28 identified the allegedly infringing product: defendant’s “ADTRAN’s Total Access 5000
ADSL2+ COMBO 24-Port Access Module.” *Atwater Partners of Texas LLC v. AT&T, Inc.*, No.

1 2:20-CV-175, 2011 WL 1004880, at *3 (E.D. Tex. Mar. 18, 2011).

2 Streetspace relies heavily on *McZeal* as purportedly holding that “even conclusory
3 allegations of direct patent infringement are sufficient to survive a motion to dismiss.” *Opp.* at 5
4 (citing *McZeal v. Sprint Nextel Corp.*, 501 F.3d 1354, 1357 (Fed. Cir. 2007)). But *McZeal*
5 reinforces that “conclusory allegations or legal conclusions masquerading as factual conclusions
6 will not suffice to prevent a motion to dismiss.” 501 F.3d at 1356. In *McZeal*, the Federal
7 Circuit held that in light of the “low bar for *pro se* litigants to avoid dismissal,” the *pro se*
8 plaintiff’s complaint included “enough detail to allow the defendants to answer and thus me[t]
9 the notice pleading required to survive a Rule 12(b)(6) motion.” *Id.* at 1359. Again, unlike this
10 case, the *pro se* plaintiff in *McZeal* had, in fact, identified the infringing devices by name as the
11 “MOTOROLA i930 and line of wireless VoIP [voice over internet protocol] products.” *Id.* at
12 1357. Based on that description, the defendants in *McZeal* had fair notice as to what it must
13 defend. *Id.* In contrast, because Streetspace’s First Amended Complaint does not identify any
14 accused products and nowhere states how Millennial Media or Jumtap are infringing the ’969
15 Patent, it does not provide either defendant “sufficient knowledge of the facts alleged to enable it
16 to answer the [First Amended C]omplaint and defend itself.” *Phonometrics, Inc. v. Hospitality*
17 *Franchise Systems, Inc.*, 203 F.3d 790, 794 (Fed. Cir. 2000).

18 Other courts have addressed and rejected Streetspace’s arguments. For example, in
19 *Interval Licensing*, “[t]he Court disagree[d] with Plaintiff’s argument that *Twombly* and *Iqbal* do
20 not apply to patent suits” and expressly rejected the argument Streetspace makes here:

21 Plaintiff cites a Federal Circuit decision to suggest that notice pleading in patent
22 suits is unchanged by *Twombly*. The court in *McZeal* did not make such a broad
23 holding. Rather, the divided court, which was considering a *pro se* complaint to
24 which a deferential standard applies, held that the plaintiff still had to “plead facts
25 sufficient to place the alleged infringer on notice as to what he must defend.” The
26 court made no attempt to hold that *Twombly* does not apply to the patent context.
The Supreme Court has also made clear that its interpretation in *Twombly* has an
extremely broad reach. . . . Thus, the Court requires Plaintiff to assert sufficient
facts as to the nature and identity of the purportedly infringing products and
devices that form the basis of the complaint.

27 2010 WL 5058620, at *2-3 (citations omitted). The *Interval Licensing* court also correctly
28 rejected Streetspace’s argument that the defendants should be required to wait until discovery

1 progresses to learn what is accused in this case: “Plaintiff urges the Court and Defendants to
2 have patience and simply await delivery of the infringement contentions as required by Local
3 Rule. This ignores that Local Rules do not trump the Federal Rules of Civil Procedure or the
4 Supreme Court’s mandate in *Twombly* and *Iqbal*.” *Id.* at *3.

5 Indeed, contrary to Streetspace’s arguments, this Court already has addressed this issue
6 and held that the new pleading standard “applies to pleadings in patent infringement actions” and
7 dismissed a Fourth Amended Complaint that failed to identify the alleged infringing products.
8 *AntiCancer, Inc. v. Xenogen Corp.*, 248 F.R.D. 278, 282 (S.D. Cal. 2007). Consistent with this
9 approach, other districts correctly require that a plaintiff specify the allegedly infringing product.
10 *See, e.g., Interval*, 2010 WL 5058620, at *3 (dismissing patent complaint that “fails to identify
11 the purportedly infringing products with any reasonable specificity”); *Ware v. Circuit City*
12 *Stores, Inc.*, 2010 WL 767094 (N.D. Ga. Jan. 5, 2010) (complaint could not survive motion to
13 dismiss where it failed to identify the infringing device with adequate specificity). For example,
14 in *Bender*, the court explicitly held that “[s]ufficient allegations would include, at a minimum,
15 . . . an allegation that certain named and specifically identified products or product components
16 also do what the patent does, thereby raising a plausible claim that the named products are
17 infringing.” 2010 WL 889541, at *6. The *Bender* court reached this conclusion after careful
18 consideration of the various district court cases in light of *Twombly* and *Iqbal*. *Id.* at *4–6.

19 Streetspace’s First Amended Complaint lacks any allegations with respect to Millennial
20 Media and Jumtap that “certain named and specifically identified products or product
21 components” also do what the patent does, as properly required by the court in *Bender*.

22 **A. Streetspace Has Not Specifically Identified Any Millennial Media Service**
23 **That It Accuses Of Direct Infringement**

24 Streetspace attempts to save its direct infringement claims against Millennial Media by
25 asserting that its First Amended Complaint “expressly identified” “Millennial Media’s MYDAS
26 advertising platform and UMPIRE ad serving technology.” *Opp.* at 10 (quoting First Amended
27 Compl. ¶ 35). But the First Amended Complaint does not “expressly identif[y]” the MYDAS
28 advertising platform and UMPIRE ad serving technology as being accused of infringement. *See*

1 First Amended Compl. ¶ 176. Instead, these technologies are only mentioned in the Background
2 section of the complaint, First Amended Compl. ¶ 35, and are never linked to Streetspace’s
3 infringement allegations. Although Streetspace’s attempts to rely on the statement in its First
4 Amended Complaint that it “incorporates by reference the allegations of paragraphs 1 through
5 173”, First Amended Compl. ¶ 174, such an indiscriminant incorporation by reference cannot
6 relieve Streetspace of its obligation to provide a Millennial Media with some idea of what is
7 being accused of infringement.¹

8 Millennial Media should not be required to guess or assume Streetspace’s intentions.
9 Indeed, in this case, Millennial Media cannot reasonably make such a guess because Streetspace
10 only accused a generic “system and/or method that employs a terminal, a database, and a
11 program as recited in one or more claims of the ‘969 patent” of directly infringing. *See* First
12 Amended Compl. ¶ 176. This generic accusation does not describe any Millennial Media
13 service, but instead circularly repeats the allegation that some unnamed product or service of
14 Millennial Media infringes the claims of the ‘969 Patent. Such a generic allegation is
15 insufficient under the pleading standard of *Twombly* and *Iqbal*.

16 **B. Streetspace Has Not Specifically Identified Any Jumtap Service That It**
17 **Accuses Of Direct Infringement**

18 Streetspace’s allegations of direct infringement against Jumtap parallel those against
19 Millennial Media, with the exception that the First Amended Complaint does not at any point in
20 the complaint mention *any* specific Jumtap product or service. *Compare* First Amended
21 Compl. ¶¶ 190–94 *with* ¶¶ 176–79. Streetspace attempts to excuse this failure by arguing
22 without support that “there is no publicly available information from which Streetspace can
23 discern the specific name of Jumtap’s accused products and services,” *Opp.* at 8, but Jumtap’s
24 website discloses a number of services and products, including Jumtap’s “Self Service Mobile
25 Ad Network,” Jumtap’s “Mobile Ad Network,” Jumtap’s “Mobile Publisher Program,” and
26 Jumtap’s “taplink.” Streetspace’s deficient pre-filing investigation does not excuse it from the

27 ¹ Paragraphs 1 through 173 of the First Amended Complaint include more than a hundred
28 paragraphs of allegations against Millennial Media’s co-defendants that are unrelated to
Streetspace’s allegations of infringement with respect to Millennial Media.

1 pleading requirements set forth in *Twombly* and *Iqbal*.

2 Instead of identifying the accused service or solution, Streetspace merely alleges that
3 Jumtap directly infringes “by making, using, selling, importing, exporting, and/or offering for
4 sale a method that employs a terminal, a database, and a program as recited in one or more
5 claims of the ’969 Patent.” First Amended Compl. ¶ 190. Such a generic accusation does not
6 describe any Jumtap service, but instead merely circularly repeats the allegation that some
7 unnamed product or service of Jumtap infringes the claims of the ’969 Patent.

8 **C. Streetspace Cannot Identify Any Millennial Media or Jumtap Services that**
9 **Allegedly Infringe the ’969 Patent Because No Millennial Media or Jumtap**
10 **Services Provide The Required “Terminal”**

11 Streetspace has not named and *cannot* name any services provided by Millennial Media
12 or Jumtap that allegedly infringe the ’969 Patent because neither Millennial Media nor Jumtap
13 sells, uses or otherwise provides a “terminal” when providing any of their services to their
14 customers. Although Streetspace argues that whether or not Millennial Media’s and Jumtap’s
15 accused services can satisfy the required “terminal” limitation should be decided after discovery,
16 the pleading standard under Rule 8 “does not unlock the doors of discovery for a plaintiff armed
17 with nothing more than conclusions.” *Iqbal*, 129 S. Ct. at 1950. Here, Streetspace has not even
18 alleged the conclusion that Millennial Media and Jumtap provide the required “terminal.”
19 Instead, Streetspace admits that the terminals are provided by Millennial Media’s and Jumtap’s
20 customers. See First Amended Compl. ¶ 179 (“Streetspace is informed and believes and based
21 thereon alleges that Millennial Media utilizes server software and/or tracking cookies located on
22 consumer terminals in order to identify consumers and target ads.” (emphasis added)); ¶ 194
23 (“Streetspace is informed and believes and based thereon alleges that Jumtap utilizes server
24 software and/or tracking cookies located on consumer terminals in order to identify consumers
25 and target ads.” (emphasis added)).

26 Contrary to Streetspace’s argument, the Court is permitted—and indeed required—to
27 address Streetspace’s failure to identify a service capable of infringing the patent on a motion to
28 dismiss. In *Desenberg v. Google, Inc.*, 392 F. App’x 868, 869–70 (Fed. Cir. 2010), the Federal
Circuit affirmed the dismissal of a complaint for patent infringement because the plaintiff had

1 not accused a service of the Defendant that allegedly performed all of the steps of the claim. In
2 that case, the patent claims at issue required the performance of both “user” and “provider” steps.
3 *Id.* at 870. The Federal Circuit affirmed the district court’s dismissal because the plaintiff “ha[d]
4 not alleged, and by the very terms of his patent, “c[ould not] realistically allege” that the
5 defendant performed the user steps. *Id.* at 871.

6 Here too, the claims of the asserted ’969 Patent require “a terminal” (claim 1), “a
7 plurality of terminals” (claim 12) or “providing a terminal” (claim 19). But, as acknowledged in
8 Streetspace’s First Amended Complaint, neither Millennial Media nor Jumtap provide a
9 terminal for any of their services to their customers. First Amended Compl. ¶¶179, 194. Indeed,
10 Streetspace did not make any effort whatsoever to refute this contention in its Opposition. *See*
11 *Opp.* at 10. Therefore, because “direct infringement c[annot] be found unless the defendant
12 performed, or directed or controlled the performance, of all of the steps of the claimed method,”
13 *Desenberg*, 392 F. App’x at 870, Streetspace has not stated and cannot state a claim for direct
14 infringement against Millennial Media and Jumtap and those should be dismissed with
15 prejudice.

16 **III. Streetspace’s Indirect Infringement Allegations Against All Defendants Should Be**
17 **Dismissed Because They Fail to Adequately Allege Knowledge of the ’969 Patent**

18 **A. Streetspace Has Failed to Adequately Allege That Any Defendant Had**
19 **Knowledge of the ’969 Patent Before the Original Complaint Was Filed**

20 Streetspace’s First Amended Complaint does not state a claim for indirect infringement
21 because Streetspace has failed adequately to plead that any of the defendants had knowledge of
22 the ’969 Patent prior to the filing of the Complaint. Streetspace’s original Complaint included no
23 factual bases to support Streetspace’s allegations that each of the Defendants knew of the ’969
24 Patent prior to the filing of the Complaint. Now, in the First Amended Complaint Streetspace
25 has alleged only that Google had actual knowledge of the ’969 Patent prior to the filing of the
26 Complaint by its automated inclusion as one of seven million patents in the Google Patents
27 database. But the law is clear that knowledge gained only after the filing of a complaint cannot
28 be alleged as a basis for relief within that complaint. *See, e.g., Xpoint*, 730 F. Supp. 2d at 357;
Mallinckrodt v. E-Z-Em, Inc., 670 F. Supp. 2d 349, 354 n.1 (D. Del. 2009). And as even the case

1 law relied upon by Streetspace makes clear, a defendant’s knowledge of the patent is not
2 presumed to be triggered merely by the act of plaintiff filing the complaint; a defendant must
3 actually receive a copy of the filed complaint before knowledge of the patent will be presumed.
4 *See, e.g., Cybiotronics, Ltd. v. Golden Source Electronics, Ltd.*, No. CV 99-10522, 2001 U.S.
5 Dist. LEXIS 6191, at *22–23 (C.D. Cal. Apr. 24, 2001) (refusing to impute knowledge as of the
6 October 12, 1999 filing date of the complaint for patent infringement, stating that “[i]t is
7 apparently undisputed that Defendant Golden Source was first served with the Complaint in this
8 action on February 22, 2000; this date represents the first date that actual knowledge may be
9 imputed.”) Streetspace failed to provide any of the defendants any notice regarding the ’969
10 Patent or a copy of its original Complaint until well after its August 23, 2010 filing date. Thus, it
11 is undisputed that upon filing the Complaint, Streetspace had no basis to allege any of the
12 defendants had knowledge of the ’969 Patent.

13 The facts of *Xpoint* are strikingly similar to the present case. As here, the plaintiff-
14 patentee in *Xpoint* filed a complaint alleging patent infringement against several defendants.
15 *Xpoint*, 730 F. Supp. 2d at 351. Later, as here, plaintiff filed an amended complaint, still alleging
16 infringement of the same patent. *Id.* Several of the defendants then moved to dismiss plaintiff’s
17 claims for indirect infringement because plaintiff had failed to adequately plead pre-suit
18 knowledge of the patent. The court dismissed plaintiff’s claims for indirect infringement, stating
19 “plaintiff at bar fails to allege sufficient facts that would allow the court to infer that [defendants]
20 had any knowledge of the ’028 patent at the time they were committing the allegedly infringing
21 activities.” *Id.* at 357.

22 Streetspace has attempted to use its filing of the original Complaint to bootstrap its
23 allegations of each defendant’s knowledge of the ’969 patent, arguing that its filing of the
24 original Complaint on August 23, 2010 put each defendant on notice of the ’969 patent, and that
25 knowledge is sufficient to support the pleadings of each defendant’s knowledge in the First
26 Amended Complaint. But this exact argument was raised by the plaintiff in *Xpoint*. *Id.*
27 (“Plaintiff argues that defendants had knowledge of the ’028 patent ‘at least since the date of the
28 suit.’”). The court in *Xpoint* did *not* allow plaintiff to rely upon the mere filing of the original

1 complaint to provide the basis for allegations in the amended complaint that defendants had
2 knowledge of the patent. Instead, the court dismissed the claims for indirect infringement
3 because “knowledge *after* filing of the present action is *not* sufficient for pleading the requisite
4 knowledge for indirect infringement.” *Id.* (emphasis added).

5 Similarly, the plaintiffs in *Mallinckrodt* sought to rely upon the act of filing the complaint
6 to establish the defendants’ knowledge of the asserted patent when alleging inducement in the
7 complaint. The court expressly rejected this argument, and dismissed plaintiffs’ inducement
8 claims because “[p]laintiffs’ Complaint does not specifically allege that [d]efendants had
9 knowledge of the ’434 Patent at the time they were committing the allegedly infringing
10 activities.” *Mallinckrodt*, 670 F. Supp. 2d at 354 n.1 (“***The Court is not persuaded by Plaintiffs’***
11 ***contention that the requisite knowledge can be established by the filing of the Plaintiffs’***
12 ***Complaint.***” (emphasis added)). As discussed at length in both *Twombly* and *Iqbal*, it is well
13 settled that a plaintiff must actually have a cause of action before he may file his complaint—
14 otherwise it would be impossible to comply with the requirement to plead that cause of action
15 adequately. Under Streetspace’s rationale, the plaintiff may file his complaint before he has a
16 cause of action, then later present the defective complaint to the defendant in order to perfect his
17 cause of action. But such a complaint cannot possibly satisfy the pleading requirements of
18 *Twombly* and *Iqbal*, because the actions necessary to perfect the cause of action will not yet have
19 occurred when the complaint is filed. Accordingly, any allegations relating to those actions will
20 be false when filed. Streetspace’s rationale would also contradict the law of imposing liability
21 for indirect patent infringement only where the defendant had knowledge of the patent; only if
22 the patentee provides pre-filing notice of the patent to a prospective defendant can that party
23 decide whether to cease the accused actions, thereby eliminating the need for the patentee to file
24 a complaint.

25 Case law relied upon by Streetspace is either inapposite or actually supports dismissal of
26 Streetspace’s claims for indirect infringement. For example, in *Minkus Electronic Display*
27 *Systems Inc. v. Adaptive Micro Systems LLC*, No. 10-666-SLR, 2011 U.S. Dist. LEXIS 26827, at
28 *17 (D. Del. Mar. 16, 2011), the court granted defendants’ motion to dismiss for failure to state a

1 claim as to indirect infringement based upon defendants’ pre-suit actions, holding that the
2 complaint’s “statements of defendants’ knowledge are insufficient to state a claim.” Streetspace
3 also relies upon the unpublished decision in *Automated Transactions, LLC v. First Niagara*
4 *Financial Group, Inc.*, No. 10-CV-00407, 2010 U.S. Dist. LEXIS 141275, at *16 (W.D.N.Y.
5 Aug. 31, 2010), for the unsupported proposition that “pre-filing knowledge of the patents is not
6 essential to [plead] a claim of induced infringement.” Although the court in *Automated*
7 *Transactions* cites two district court decisions in support of the statement quoted above, neither
8 of those decisions even address the adequacy of pleading inducement.

9 In each of the other decisions relied upon by Streetspace, the court merely determined
10 that liability for indirect infringement could be based upon a defendant’s knowledge and actions
11 after the suit had commenced. In none of the decisions did the court address the adequacy of the
12 pleadings. See, e.g., *Monolithic Power Sys., Inc. v. O2 Micro Int’l Ltd.*, 476 F. Supp. 2d 1143,
13 1158 (N.D. Cal. 2007) (granting defendant’s motion for summary judgment of noninfringement,
14 adequacy of plaintiff’s pleading of indirect infringement was not at issue); *Cybiotronics*, 2001
15 U.S. Dist. LEXIS 6191, at *22–23 (granting defendant’s motion for summary judgment of
16 noninfringement, adequacy of plaintiff’s pleading of indirect infringement was not at issue);
17 *Broadcom Corp. v. Qualcomm Inc.*, No. CV05-467-JVS, 2007 U.S. Dist. LEXIS 62764, at *5
18 (C.D. Cal. Aug. 10, 2007) (ruling on several post-trial motions, sufficiency of pleadings was not
19 at issue).

20 Streetspace seeks safe harbor by alleging that its pleading of claims for indirect
21 infringement is substantially similar to the counterclaims for indirect infringement pled by Apple
22 in *Elan Microelectronics*, 2009 WL 2972374, at *2. But the adequacy of the pleadings was
23 never put in issue in *Elan*, and thus the court never had occasion to consider the issue.

24 **B. Google’s Automated Republishing of Patents in its Google Patents Service**
25 **Provides No Reasonable Basis to Presume Knowledge of the ’969 Patent**

26 With respect to Google, Streetspace now alleges—for the first time in the First Amended
27 Complaint—that it can reasonably be presumed that Google had pre-suit knowledge of ’969
28 Patent merely because it was included in the automated Google Patents database service. Google

1 Patents is provided as a free public service, using the same automated scanning and optical
2 character recognition (OCR) technology that powers Google Book Search. Under Streetspace’s
3 view of the law this would provide sufficient basis to presume every visitor to the Google Patents
4 website has actual knowledge of each of the seven million patents it contains. But as Streetspace
5 admits in the First Amended Complaint, “[a]ll of the approximately 7 million U.S. patents have
6 been put in the database including the ’969 patent.” First Amended Compl. ¶ 72. It is this very
7 comprehensiveness that makes Streetspace’s assertion patently ridiculous.

8 Patents are added and maintained in the Google Patents database using automated
9 computerized processes, without any regular or systematic review by a human. Streetspace has
10 alleged nothing to support its assertion that anyone at Google had any knowledge of the ’969
11 Patent before Streetspace provided Google a copy of the Complaint. Under Streetspace’s
12 rationale, every electronic publisher would be deemed to have been put on notice as to all of the
13 data it published. For example, West Publishing and Lexis also provide electronic databases of
14 U.S. Patents, and Streetspace would deem them to have been put on notice and have actual
15 knowledge as to every one of the millions of patents in those databases. But the law is well-
16 settled that a facially implausible assertion in a pleading, or one in defiance of common sense,
17 should not be accepted by the Court. *See, e.g., Sprewell v. Golden State Warriors*, 266 F.3d 979,
18 988 (9th Cir. 2001) (on a motion to dismiss, the Court is not “required to accept as true
19 allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable
20 inferences.”); *Twombly*, 550 U.S. at 555, 570 (holding that a complaint must “raise a right to
21 relief above the speculative level” and must “state a claim to relief that is plausible on its face.”).

22 **IV. Conclusion**

23 Based on the foregoing, Streetspace’s direct infringement claims against Millennial
24 Media and Jumtap and indirect infringement claims against all Defendants should be dismissed.
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on May 2, 2011, to all counsel of record who are deemed to have consented to electronic service via the Court’s CM/ECF system per Civil Local Rule 5.4. Any counsel of record who have not consented to electronic service through the Court’s CM/ECF system will be served by electronic mail, first class mail, facsimile and/or overnight delivery.

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