

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

John B. Scherling (SBN 122234)
Scott H. Davison (SBN 228807)
SUGHRUE MION, PLLC
501 West Broadway, Suite 1600
San Diego, California 92101-3595
Telephone: 619.238.3545
Facsimile: 619.238.4931
jscherling@sughrue.com
sdavison@sughrue.com

William H. Mandir (*pro hac vice* pending)
John F. Rabena (*pro hac vice* pending)
Carl J. Pellegrini (*pro hac vice* pending)
Chandran B. Iyer (*pro hac vice* pending)
SUGHRUE MION, PLLC
2100 Pennsylvania Avenue, N.W.
Washington, D.C. 20037
Telephone: 202.293.7060
Facsimile: 202.293.7860
wmandir@sughrue.com
jrabena@sughrue.com
cpellegrini@sughrue.com
cbiyer@sughrue.com

Attorneys for Plaintiff
GIRAF.COM, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JCS

08 08

2745

GIRAF.COM, INC.,
Plaintiff,

v.

ALEXA INTERNET, INC.;
NIALL O'DRISCOLL,
Defendants.

Case No.:

COMPLAINT FOR DECLARATORY
JUDGMENT OF NONINFRINGEMENT,
DECLARATORY JUDGMENT OF
INVALIDITY AND UNFAIR
COMPETITION

DEMAND FOR JURY TRIAL

E-filing

ORIGINAL
FILED
08 JUN -2 PM 12:52
RICHARD W. WELKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 Plaintiff GIRAFA, by and through its attorneys, for its Complaint against Defendants
2 ALEXA INTERNET, INC. (“ALEXA”) and NIALL O’DRISCOLL (“O’DRISCOLL”) (collectively
3 “Defendants”), alleges as follows:

4 **THE PARTIES**

5 1. Plaintiff GIRAFA is a corporation organized and existing under the laws of
6 Delaware, with its principal place of business at 1313 North Market Street, Suite 5100, Wilmington,
7 Delaware 19801.

8 2. Defendant ALEXA is a California corporation organized and existing under the laws
9 of California, with a principal place of business at Presidio of San Francisco, Building 37, P.O.
10 Box 29141, California 94129.

11 3. According to the ALEXA website, defendant O’DRISCOLL is the Chief Executive
12 Officer of ALEXA.

13 **JURISDICTION AND VENUE**

14 4. Counts I and II set forth below arise under the provisions of the Declaratory Relief
15 Act, 28 U.S.C. § 2201 *et seq.*, and the Patent Laws of the United States, 35 U.S.C. § 101 *et seq.*, to
16 declare the rights and legal relations of the parties. An actual, justiciable controversy exists between
17 GIRAFA and Defendants, arising from ALEXA’s allegation that GIRAFA has committed certain
18 acts of patent infringement.

19 5. Jurisdiction over Counts I and II is conferred on this Court pursuant to 28 U.S.C.
20 §§ 1331 (federal question jurisdiction) and 1338(a) (original jurisdiction under patent laws).
21 Jurisdiction over Count III is conferred on this Court pursuant to 28 U.S.C. § 1367 (supplemental
22 jurisdiction).

23 6. Venue under 28 U.S.C. § 1391(b) and personal jurisdiction are proper in this district,
24 as Defendants reside and/or conduct substantial business in this district and because, on information
25 and belief, Defendants’ conduct giving rise to this lawsuit took place in this judicial district.

26 **BACKGROUND**

27 7. On December 5, 2007 GIRAFA filed in the United States District Court for the
28 District of Delaware a Complaint for patent infringement against a number of defendants, including

1 ALEXA, alleging infringement of United States Patent No. 6,864,904 entitled "Framework For
2 Providing Visual Context to WWW Hyperlinks" ("the '904 patent") (*Girafa.com v. Amazon Web
3 Services, LLC, et al.*, C.A. No. 07-787-SLR) ("the Delaware action").

4 8. On March 13, 2008, GIRAFA filed a Motion for Preliminary Injunction (the "PI
5 Motion") against several parties, including ALEXA, in the Delaware action.

6 9. ALEXA, (1) without a good faith belief in the merits of its claim, (2) in retaliation for
7 GIRAFA's filing of the Delaware action and PI Motion, and (3) for the purpose of causing GIRAFA
8 resources to be diverted to defending meritless sham litigation during the pendency of the Delaware
9 action, on March 21, 2008 filed in the United States District Court for the District for Eastern
10 District of Texas (Marshall Division) a complaint for patent infringement alleging that GIRAFA
11 infringes United States Patent No. 6,282,548 entitled "Automatically Generate And Displaying
12 Metadata As Supplemental Information Concurrently With The Web Page, There Being No Link
13 Between Web Page And Metadata" ("the '548 patent") (*Alexa Internet, Inc. v. Girafa.com, Inc.*,
14 No. 2:08-cv-121) ("the Texas action").

15 10. In particular, the '548 patent is directed to a method and apparatus that displays
16 metadata about a web page being displayed by a browser. After a browser receives a request for a
17 web page from a Web server, it displays the requested web page in the conventional manner. A
18 separate client concurrently displays metadata about the web page, which the client has requested
19 and received from a database metadata server. This metadata may include, for example, statistics
20 about visits or links to the web page, the age of the web page, contact information for the
21 administrator of the web page, etc.

22 11. Critically and fundamentally, the claims, specification and prosecution history of the
23 '548 patent limit the claims of the '548 patent to metadata about a *currently displayed* web page.

24 12. In an amendment filed on May 4, 1999 during the prosecution of the '548 patent, the
25 applicants presented arguments directed to overcoming the rejection under 35 U.S.C. § 102(e) over
26 U.S. Patent No. 5,706,507 to Schloss ("Schloss"). For example, the applicants stated the following
27 with respect to Schloss:
28

1 Schloss, at col. 10, lines 8-36, describes displaying a warning message
2 that a link is to an offensive web page. This occurs under Schloss when a
3 user is viewing a non-offensive web page (web page A), which contains a
4 link to an offensive web page (web page B). Schloss then displays a
5 warning that web page B is offensive. This message is not displayed
6 concurrently with web page B, as web page B is not being displayed at all.
7 . . . Of course, the message does not describe the web page being
8 displayed, web page A, which is not offensive.

9 Amendment of May 4, 1999 at 7 (emphasis added).

10 13. In the May 4, 1999 amendment filed in the prosecution of the '548 patent, the
11 applicants further stated that "[t]he claimed invention is advantageous because, unlike Schloss, it
12 provides a user with additional information about the current webpage." Amendment of May 4,
13 1999 at 7.

14 14. Finally, the applicants summarized their argument against Schloss as follows:

15 When Schloss prints a message warning the user that displayed link
16 would lead to an offensive page, Schloss is not providing a link to the
17 other page as information about the page being displayed, but is instead
18 providing information about the undisplayed page to which the link
19 pertains.

20 Amendment of May 4, 1999 at 8 (emphasis added).

21 15. In a Continuing Prosecution Application ("CPA") of June 21, 1997, the applicants for
22 the '548 patent requested reconsideration of their application, yet again emphasizing that
23 "[m]etadate is supplemental information about the web page being displayed, not about the target
24 pages of links on the web page being displayed." CPA of June 21, 1997 at 11.

25 16. The accused GIRAFA Toolbar and Thumbnail Service, however, only display data
26 about *linked* web pages.

27 17. The claims, specification, and prosecution history of the '548 patent likely preclude
28 any interpretation under which GIRAFA's technology could be considered infringement,
inducement of infringement, or contributory infringement, by limiting the claim so as to apply only
to metadata about a currently displayed web page, while GIRAFA's thumbnails are clearly about
linked pages.

1 18. In asserting ALEXA's '548 patent against GIRAFA, ALEXA is trying to cover
2 exactly what it told the U.S. Patent Office was NOT covered by the '548 patent, namely information
3 about linked pages.

4 19. The claims, specification and prosecution history of the '548 patent thus preclude any
5 interpretation under which GIRAFA's technology could be considered infringement, inducement of
6 infringement or contributory infringement, by limiting the claims to apply only to metadata about a
7 currently displayed web page, while GIRAFA's thumbnails clearly are about linked pages.

8 20. GIRAFA denies ALEXA's allegations of infringement in the Texas action, and
9 further alleges that the '548 patent is invalid. Thus, an actual justiciable controversy exists between
10 ALEXA and GIRAFA as to the infringement and validity of the '548 patent. Moreover, ALEXA's
11 conduct as alleged herein constitutes unlawful, unfair competition under California law.

12 **COUNT I: DECLARATORY JUDGMENT OF NON-INFRINGEMENT**

13 **(Defendant ALEXA)**

14 21. GIRAFA reasserts Paragraphs 1-20 as if fully set forth herein.

15 22. GIRAFA has not manufactured, used, sold, or offered for sale in the United States, or
16 imported into the United States, any products and/or services that literally infringe any claim of the
17 '548 patent.

18 23. GIRAFA has not manufactured, used, sold, or offered for sale in the United States, or
19 imported into the United States, any products and/or services that infringe any claim of the '548
20 patent under the doctrine of equivalents.

21 24. GIRAFA has not manufactured, used, sold, or offered for sale in the United States, or
22 imported into the United States, any products and/or services that infringe the '548 patent or
23 otherwise committed any act in violation of 35 U.S.C. § 271 with respect to the '548 patent.

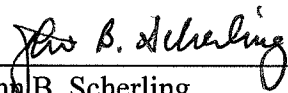
24 25. Because of the proceedings in the PTO during the prosecution of the '548 patent
25 application including related applications, narrowing amendments and arguments submitted to
26 distinguish the application claims from prior art to obtain the '548 patent, ALEXA is estopped from
27 contending that the claims of the '548 patent can be interpreted to cover any GIRAFA product
28 and/or services, including the accused products.

1 **JURY DEMAND**

2 Pursuant to Rule 38 of Federal Rules of Civil Procedure, GIRAFA demands a trial by jury on
3 all issues triable by jury.

4
5 DATED: June 2, 2008

SUGHRUE MION, PLLC

6
7 By: 
8 John B. Scherling
9 Scott H. Davison
10 101 West Broadway, Suite 1600
11 San Diego, CA 92101

12 William H. Mandir (*pro hac vice* pending)
13 John F. Rabena (*pro hac vice* pending)
14 Carl J. Pellegrini (*pro hac vice* pending)
15 Chandran B. Iyer (*pro hac vice* pending)
16 2100 Pennsylvania Avenue, N.W.
17 Washington, D.C. 20037

18
19 Attorneys for Plaintiff
20 GIRAFA.COM, INC.
21
22
23
24
25
26
27
28