

1 (2007) (“*Twombly*”). Because of this failure, Interval’s Fourth Cause of Action should be
2 dismissed.

3 II. FACTUAL BACKGROUND

4 On August 27, 2010, Interval filed its complaint alleging that Facebook along with AOL,
5 Apple, eBay, Google, Netflix, Office Depot, OfficeMax, Staples, Yahoo, and YouTube infringe
6 U.S. Patent No. 6,757,682 (“the ’682 Patent”). (D.I. 1 at ¶¶ 45–55.) Interval’s allegations as to
7 the ’682 Patent are identical as to each defendant and merely assert that each infringes “by
8 making and using websites and associated hardware and software to provide alerts that
9 information is of current interest to a user as claimed in the patent.”¹ (*Id.*) Interval’s allegations
10 do not identify any Facebook products or services that are being accused of infringement, nor
11 provide a factual basis for the infringement claim.

12 III. ARGUMENT

13 The Supreme Court’s decision in *Twombly* makes clear that a complaint must include
14 “enough facts to state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570.
15 The Court further specified in *Iqbal* that in order to be facially plausible, a claim must plead
16 “factual content that allows the court to draw the reasonable inference that the defendant is liable
17 for the misconduct alleged.” *Iqbal*, 129 S. Ct. at 1949. “A pleading that offers ‘labels and
18 conclusions’ or a ‘formulaic recitation of the elements of a cause of action will not do.’ Nor does
19 a complaint suffice if it tenders ‘naked assertion[s]’ devoid of ‘further factual enhancement.’” *Id.*
20 (quoting *Twombly*, 550 U.S. at 555, 557).

21 Interval’s allegations in its Fourth Cause of Action against Facebook fail to state a claim
22 for patent infringement under *Twombly* and *Iqbal* because they merely rephrase the title of the
23 ’682 Patent, add “websites and associated hardware and software,” and state that Facebook’s
24 allegedly infringing activity is performed “as claimed in the patent.” (D.I. 1 at ¶ 48.) Interval’s

25
26 ¹ The full text of the allegations against Facebook in the Interval complaint are as follows:
27 “Defendant Facebook has infringed and continues to infringe one or more claims of the ’682
28 patent. Facebook is liable for infringing the ’682 patent under 35 U.S.C. § 271 by making and
using websites and associated hardware and software to provide alerts that information is of
current interest to a user as claimed in the patent.” (*Id.* at ¶ 48.)

1 Fourth Cause of Action does not identify the products or services offered by Facebook that
2 allegedly infringe or how Facebook has allegedly infringed the patent-in-suit. The use of
3 identical allegations against all defendants, who provide widely varying products and services,
4 underscores the lack of specificity of Interval's claims. For these reasons, Interval's Fourth
5 Cause of Action does not satisfy the pleading requirements set forth in *Twombly* and *Iqbal*,
6 warranting dismissal under Rule 12(b)(6) for failure to state a claim.

7 **IV. CONCLUSION**

8 For the foregoing reasons, and for the reasons discussed in Google's Motion to Dismiss,
9 Facebook respectfully requests that the Court dismiss Interval's complaint as to the Fourth Cause
10 of Action against Facebook for failure to state a claim upon which relief can be granted.

11 DATED this 22nd day of October, 2010.

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on October 22, 2010, I electronically filed the following document(s):
3 **DEFENDANT FACEBOOK, INC.'S JOINDER IN DEFENDANTS GOOGLE, INC. AND YOUTUBE, LLC'S**
4 **MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE**
5 **GRANTED PURSUANT TO FED.R. CIV. P. 12(B)(6)** with the Clerk of the Court using the CM/ECF
6 system, which will send an email notification of such filing to the attorney(s) of record listed
7 below.

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