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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY: _____

Derek A. Newman, State Bar No. 190467
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John Du Wors, State Bar No. 233913
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Derek Linke (*pro hac vice* to be filed)
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Telephone: (206) 274-2800
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Attorneys for Plaintiff
ESSOCIATE, INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

ESSOCIATE, INC., a Delaware corporation,

Plaintiff,

v.

W4 MEDIA LLC, a Delaware limited liability company; and MAXBOUNTY INC., a foreign corporation;

Defendants.

Case No. CV 10 5376 GAF (RCx)

COMPLAINT FOR PATENT INFRINGEMENT

DEMAND FOR JURY TRIAL

BY FAX

ESSOCIATE, INC. ("Essociate" or "Plaintiff") hereby alleges for its complaint against W4 MEDIA LLC, a Delaware limited liability company; and MAXBOUNTY INC., a foreign corporation; (together, "Defendants") upon personal information as to Plaintiff's own activities, and upon information and belief as to the activities of others, as follows:

I. NATURE OF THE CASE

1. This is a claim for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

II. JURISDICTION AND VENUE

2. This Court has exclusive subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. Personal jurisdiction over Defendants is proper in this court. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b), (c) and/or 1400(b).

III. PARTIES

4. Plaintiff Essociate, Inc. is a Delaware corporation with its principal business address at 4630 Geary Boulevard, Suite 101, San Francisco, California 94118.

5. Essociate is the owner of U.S. Patent No. 6,804,660 ("the '660 Patent"), entitled "System Method and Article of Manufacture for Internet Based Affiliate Pooling", issued October 12, 2004 (copy attached as Exhibit A).

6. Essociate is the owner of the entire right, title, and interest in the '660 Patent and has standing to sue for all past, present, and future infringement of the '660 Patent.

7. Upon information and belief, Defendant W4 MEDIA LLC is a Delaware limited liability company with its headquarters and principal business

address at Edgemar Building, 2415 Main Street, Unit A, Santa Monica, California 90405. Upon information and belief, W4 MEDIA LLC does business as "w4 Performance Ad Market" and owns and operates the Internet affiliate marketing network located at <<http://www.w4.com>> and transacts business and has provided to customers in this judicial district and throughout the State of California products and/or services that infringe and/or induce infringement of, and/or contribute to infringement of, one or more claims of the '660 Patent.

8. Upon information and belief, Defendant MAXBOUNTY, INC. is an Canada corporation with its principal place of business in Ottawa, Canada. Upon information and belief, MAXBOUNTY, INC. does business as "MaxBounty" and owns and operates the Internet affiliate marketing network located at <<http://www.maxbounty.com>> and transacts business and has provided to customers in this judicial district and throughout the State of California products and/or services that infringe and/or induce infringement of, and/or contribute to infringement of, one or more claims of the '660 Patent.

9. Upon information and belief, Defendants, and each of them, manufacture, import into the United States, sell, offer for sale, and/or use software products that infringe one or more claims of the '660 Patent. Upon information and belief, such software products are offered for sale to customers in this judicial district and throughout the state of California.

IV. DEFENDANTS' INFRINGEMENT OF THE '660 PATENT

10. Upon information and belief, each Defendant has been and is directly infringing the '660 Patent under 35 U.S.C. § 271(a) by making, using, modifying, upgrading, performing quality control, and providing support for its affiliate software and/or other products and/or services provided by means of that software and/or other products.

11. Upon information and belief, each Defendant has also been and is

directly infringing the '660 Patent under 35 U.S.C. § 271(a) by selling, offering for sale, and/or importing into the United States affiliate software and/or other products and/or services that infringe one or more claims of the '660 patent, including, by way of example and not limitation, Claim 1.

12. Upon information and belief, each Defendant's customers and other users of that Defendant's software and other products and the services provided by means of that software and other products, have been and are directly infringing one or more claims of the '660 Patent under 35 U.S.C. § 271(a).

13. Upon information and belief, each Defendant has been and is actively inducing infringement of one or more claims of the '660 Patent under 35 U.S.C. § 271(b) by providing to customers, including customers in this judicial district, its affiliate software and other products, as well as services provided by means of its affiliate software and other products, along with instructions and directions that result in the use of the methods, computer programs, and systems disclosed and claimed in the '660 Patent. On information and belief, each Defendant knew, or should have known, that its customers and other users of its services would use that Defendant's affiliate software and other products to infringe the '660 Patent and intended such infringement.

14. Upon information and belief, each Defendant has been and is contributorily infringing one or more claims of the '660 Patent under 35 U.S.C. § 271(c) by making, selling, and/or offering for sale to customers, including customers in this judicial district, its affiliate software and other products, as well as services provided by means of its affiliate software and other products. Each Defendant's affiliate software and other products are each a material part of the invention claimed in the '660 patent, are not staple articles or commodities of commerce, and have no substantial non-infringing use. Upon information and belief, each Defendant knew, or should have known, that its affiliate software and other products were especially made or adapted for an infringing use.

15. Each Defendant's infringement, contributory infringement, and inducement to infringe the '660 Patent has been willful and has deliberately injured and will continue to injure Essociate unless and until the Court enters a preliminary and permanent injunction prohibiting further infringement and, specifically, enjoining further manufacture, use, importation, sale, and/or offer for sale of products that infringe the '660 Patent.

V. RELIEF REQUESTED

WHEREFORE, Essociate asks this Court to enter judgment against each Defendant and against each Defendant's subsidiaries, affiliates, agents, servants, employees and all persons in active concert or participation with them, granting the following relief:

A. A judgment or order declaring that each Defendant has infringed, induced others to infringe, and/or contributorily infringed the '660 Patent;

B. A judgment, order, or award of damages adequate to compensate Essociate for each Defendant's infringement of the '660 Patent, based on lost sales, lost profits, price erosion, loss of market share, or any other applicable theory, together with prejudgment interest from the date infringement of the '660 Patent began;

C. A permanent injunction prohibiting further infringement, inducement, and contributory infringement of the '660 Patent;

D. A finding that this case is exceptional and an award to Essociate of its attorneys' fees and costs as provided by 35 U.S.C. § 285;

E. Increased damages as permitted by 35 U.S.C. § 284, together with prejudgment interest; and

F. Such other and further relief as this Court or a jury may deem proper and just.

Dated this 21st day of July, 2010.

Respectfully Submitted,

NEWMAN & NEWMAN, ATTORNEYS AT LAW, LLP

By: _____

John Du Wors, State Bar No. 233913
duwors@newmanlaw.com
Derek A. Newman, State Bar No. 190467
derek@newmanlaw.com
Derek Linke (*pro hac vice* to be filed)
linke@newmanlaw.com
505 Fifth Avenue South, Suite 610
Seattle, WA 98104
Telephone: (206) 274-2800
Facsimile: (206) 274-2801

Attorneys for Plaintiff
ESSOCIATE, INC.

JURY DEMAND

Pursuant to FED. R. CIV. P. 38(b), Plaintiff Essociate, Inc. demands a trial by jury of all issues presented in this complaint which are triable by jury.

Dated this 21st day of July, 2010.

Respectfully Submitted,

NEWMAN & NEWMAN, ATTORNEYS AT LAW, LLP

By: _____

John Du Wors, State Bar No. 233913
duwors@newmanlaw.com
Derek A. Newman, State Bar No. 190467
derek@newmanlaw.com
Derek Linke (*pro hac vice* to be filed)
linke@newmanlaw.com

Attorneys for Plaintiff
ESSOCIATE, INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Gary A. Feess and the assigned discovery Magistrate Judge is Rosalyn M. Chapman.

The case number on all documents filed with the Court should read as follows:

CV10- 5376 GAF (RCx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

==========

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

[X] **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

[ ] **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

[ ] **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

Name & Address:

Derek A. Newman, State Bar No. 190457
John Du Wors, State Bar No. 233913
Derek Linke (pro hac vice pending)
Newman & Newman, Attorneys at Law, LLP
505 Fifth Avenue South, Suite 610
Seattle, WA 98104 (206) 274-2800

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ESSOCIATE, INC., a Delaware corporation,

PLAINTIFF(S)

v.

W4 MEDIA LLC, a Delaware limited liability company; and MAX Bounty INC a Foreign corporation

DEFENDANT(S).

CASE NUMBER

CV10 5376 GAF (RCx)

SUMMONS

TO: DEFENDANT(S): _____

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☑ complaint ☐ _____ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, John Du Wors, whose address is Newman & Newman, 505 Fifth Avenue South, Suite 610, Seattle, WA 98104. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: 21 JUL 2010

By: Maricela Diaz
Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

Name & Address:

Derek A. Newman, State Bar No. 190457
John Du Wors, State Bar No. 233913
Derek Linke (pro hac vice pending)
Newman & Newman, Attorneys at Law, LLP
505 Fifth Avenue South, Suite 610
Seattle, WA 98104 (206) 274-2800

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ESSOCIATE, INC., a Delaware corporation,

PLAINTIFF(S)

v.

W4 MEDIA LLC, a Delaware limited liability company; and MAX BOUNTY INC A FOREIGN corporation

DEFENDANT(S).

CASE NUMBER

CV10 5376-GAF(RCx)

SUMMONS

TO: DEFENDANT(S): _____

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☑ complaint ☐ _____ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, John Du Wors, whose address is Newman & Newman, 505 Fifth Avenue South, Suite 610, Seattle, WA 98104. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: 21 JUL 2010

By: MARILYN DAVIS, Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself ☐)
ESSOCIATE, INC., a Delaware corporation,

DEFENDANTS
W4 MEDIA LLC, a Delaware limited liability company; and
MAX BOUNTY INC., a foreign corporation;

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)
Newman & Newman, Attorneys at Law, LLP, 505 Fifth Avenue South, Suite 610, Seattle, WA 98104 (206) 274-2800

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.)

☐ 1 U.S. Government Plaintiff
☑ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business in this State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business in Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. ORIGIN (Place an X in one box only.)

☑ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☑ Yes ☐ No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: ☐ Yes ☑ No ☐ **MONEY DEMANDED IN COMPLAINT: $**

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
35 U.S.C. § 281; patent infringement

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES
☐ 400 State Reapportionment
☐ 410 Antitrust
☐ 430 Banks and Banking
☐ 450 Commerce/ICC Rates/etc.
☐ 460 Deportation
☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 480 Consumer Credit
☐ 490 Cable/Sat TV
☐ 810 Selective Service
☐ 850 Securities/Commodities/ Exchange
☐ 875 Customer Challenge 12 USC 3410
☐ 890 Other Statutory Actions
☐ 891 Agricultural Act
☐ 892 Economic Stabilization Act
☐ 893 Environmental Matters
☐ 894 Energy Allocation Act
☐ 895 Freedom of Info. Act
☐ 900 Appeal of Fee Determination Under Equal Access to Justice
☐ 950 Constitutionality of State Statutes

CONTRACT
☐ 110 Insurance
☐ 120 Marine
☐ 130 Miller Act
☐ 140 Negotiable Instrument
☐ 150 Recovery of Overpayment & Enforcement of Judgment
☐ 151 Medicare Act
☐ 152 Recovery of Defaulted Student Loan (Excl. Veterans)
☐ 153 Recovery of Overpayment of Veteran's Benefits
☐ 160 Stockholders' Suits
☐ 190 Other Contract
☐ 195 Contract Product Liability
☐ 196 Franchise

REAL PROPERTY
☐ 210 Land Condemnation
☐ 220 Foreclosure
☐ 230 Rent Lease & Ejectment
☐ 240 Torts to Land
☐ 245 Tort Product Liability
☐ 290 All Other Real Property

TORTS PERSONAL INJURY
☐ 310 Airplane
☐ 315 Airplane Product Liability
☐ 320 Assault, Libel & Slander
☐ 330 Fed. Employers' Liability
☐ 340 Marine
☐ 345 Marine Product Liability
☐ 350 Motor Vehicle
☐ 355 Motor Vehicle Product Liability
☐ 360 Other Personal Injury
☐ 362 Personal Injury-Med Malpractice
☐ 365 Personal Injury-Product Liability
☐ 368 Asbestos Personal Injury Product Liability

IMMIGRATION
☐ 462 Naturalization Application
☐ 463 Habeas Corpus-Alien Detainee
☐ 465 Other Immigration Actions

TORTS PERSONAL PROPERTY
☐ 370 Other Fraud
☐ 371 Truth in Lending
☐ 380 Other Personal Property Damage
☐ 385 Property Damage Product Liability

BANKRUPTCY
☐ 422 Appeal 28 USC 158
☐ 423 Withdrawal 28 USC 157

CIVIL RIGHTS
☐ 441 Voting
☐ 442 Employment
☐ 443 Housing/Accommodations
☐ 444 Welfare
☐ 445 American with Disabilities - Employment
☐ 446 American with Disabilities - Other
☐ 440 Other Civil Rights

PRISONER PETITIONS
☐ 510 Motions to Vacate Sentence Habeas Corpus
☐ 530 General
☐ 535 Death Penalty
☐ 540 Mandamus/ Other
☐ 550 Civil Rights
☐ 555 Prison Condition

FORFEITURE/ PENALTY
☐ 610 Agriculture
☐ 620 Other Food & Drug
☐ 625 Drug Related Seizure of Property 21 USC 881
☐ 630 Liquor Laws
☐ 640 R.R. & Truck
☐ 650 Airline Regs
☐ 660 Occupational Safety /Health
☐ 690 Other

LABOR
☐ 710 Fair Labor Standards Act
☐ 720 Labor/Mgmt. Relations
☐ 730 Labor/Mgmt. Reporting & Disclosure Act
☐ 740 Railway Labor Act
☐ 790 Other Labor Litigation
☐ 791 Empl. Ret. Inc. Security Act

PROPERTY RIGHTS
☐ 820 Copyrights
☑ 830 Patent
☐ 840 Trademark

SOCIAL SECURITY
☐ 861 HIA (1395ff)
☐ 862 Black Lung (923)
☐ 863 DIWC/DIWW (405(g))
☐ 864 SSID Title XVI
☐ 865 RSI (405(g))

FEDERAL TAX SUITS
☐ 870 Taxes (U.S. Plaintiff or Defendant)
☐ 871 IRS-Third Party 26 USC 7609

FOR OFFICE USE ONLY: Case Number: SACV10-2107-JVS-MLG CV10 5376

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☐ No ☑ Yes
If yes, list case number(s): SACV10-2107-JVS-MLG

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☐ No ☑ Yes
If yes, list case number(s): SACV09-536 JVS-MLG

Civil cases are deemed related if a previously filed case and the present case:
(Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☑ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☑ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☑ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	San Francisco County

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
W4 Media LLC, Los Angeles County	MaxBounty Inc, Canada

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country

*** Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties**
Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): _____ **Date** July 21, 2010

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))