

certified as to completeness and authenticity.

If any portion of this Request is deemed to be unacceptable under the laws of Japan, please disregard that portion and continue to comply with as much of the Request as legally permissible.

II. FACTS OF THE CASE

Plaintiff Onstream Media Corporation (“Onstream” or “Plaintiff”) alleges Facebook infringes of U.S. Patent Nos. 9,161,068, 9,467,728, 10,038,930, and 10,200,648 (collectively, the “Patents-in-Suit”). In 2017, Onstream entered into a Patent Purchase Agreement with Mr. Unten for the sale of the Patents-in-Suit that was disclosed in a Form 8-K filed by Onstream with the United States Securities and Exchange Commission on March 2, 2017. According to this filing, the total purchase price was to be a minimum of \$40.0 million U.S. dollars and a maximum of \$80.0 million U.S. dollars. In another Form 8-K filed on June 15, 2018, Onstream disclosed that the sale of the Asserted Patents contemplated by the Patent Purchase Agreement had failed to close for failure of payment by Mr. Unten, the buyer.

Mr. Unten possesses unique information concerning the valuation of the Patents-in-Suit, including the facts and circumstances surrounding the negotiations of the terms of the Patent Purchase Agreement.

III. EVIDENCE TO BE OBTAINED

The evidence to be obtained are identified in Attachment A. It is respectfully requested that a judicial authority of Japan order Mr. Unten to produce copies of documents and other property as described in Attachment A. It is additionally requested that a judicial authority of Japan compel Mr. Unten to provide testimony regarding the deposition topics set forth in Attachment A.

IV. PROTECTIVE ORDER

In this matter, a Protective Order has been entered that governs the production of documents, testimony and any record of the testimony. A copy of this order is attached hereto for your reference as Attachment B. Because this action involves confidential and propriety business information, the Protective Order serves to protect such information from public disclosure. Any responses to this Letter, which may be used as evidence in the above-captioned litigation, may be

designated and treated appropriately under the Protective Order.

V. URGENCY

A response is requested by March 12, 2021, or as soon as practicable. Expedient treatment of this request will allow the parties to obtain and review the produced documents and obtain testimony before the cutoff of fact discovery in this matter.

VI. RECIPROCITY

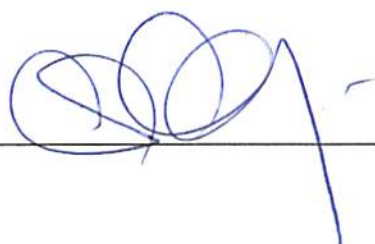
The United States District Court for Western District of Texas is willing and able to provide similar assistance to the judicial authorities of Japan, should a similar Request for International Assistance be received from those authorities.

VII. REIMBURSEMENT FOR COSTS

Should there be any costs associated with the service herein, it will be the responsibility of the attorneys for Defendant to reimburse the appropriate Judicial Authority in Japan concerning the same. Please direct any correspondence or communications concerning costs to:

Richard G. Frenkel
LATHAM & WATKINS LLP
140 Scott Drive
Menlo Park, CA 94025
Tel: 650.328.4600
Fax: 650.463.2600
Email: rick.frenkel@lw.com

Date: March 12, 2021



The Honorable Alan D. Albright
UNITED STATES DISTRICT
JUDGE WESTERN DISTRICT OF
TEXAS

(SEAL OF COURT)

800 Franklin Avenue, Room 301
Waco, Texas 76701

ATTACHMENT A

DEFINITIONS

The following words and phrases are defined and used herein as follows:

1. The terms “You” or “Your” refer to Eriya Unten.
2. The term “Current Litigation” refers to the litigation entitled *Onstream Media Corp. v. Facebook, Inc.*, Case No. 1:20-cv-00214-ADA, filed in the Western District of Texas on December 13, 2019.
3. The terms “Defendant” or “Facebook” refers to Facebook, Inc.
4. The terms “Plaintiff” or “Onstream” refer to Onstream Media Corporation, and any of its directors, employees, agents, parents, subsidiaries, affiliates, predecessors, and successors.
5. The term “Ocean Tomo” refers to Ocean Tomo, LLC, and any of its directors, employees, agents, parents, subsidiaries, affiliates, predecessors, and successors.
6. The term “Third Party” refers to any person or entity other than You, Plaintiff, or Defendant.
7. The term “’068 patent” means U.S. Patent No. 9,161,068, which issued from App. No. 10/808,894.
8. The term “’728 patent” means U.S. Patent No. 9,467,728, which issued from App. No. 12/110,691.
9. The term “’930 patent” means U.S. Patent No. 10,038,930, which issued from App. No. 14/843,457.
10. The term “’648 patent” means U.S. Patent No. 10,200,648, which issued from App. No. 15/255,416.
11. The term “Asserted Patents” refers to the ’068, ’728, ’930, and ’648 patents, collectively.

12. “Related Patents” means (a) all divisional, continuation, and continuation-in-part applications of any of the applications from which any of the Asserted Patents issued, and any application that shares the same or substantially similar specification, or a portion thereof, as any of the Asserted Patents or claims priority to any of the applications in the chains of applications that led to the Asserted Patents; (b) all patents issuing from the applications described in (a); (c) all reissues, reexaminations, inter partes reviews, and any other post-grant proceedings before the Patent Office of each of the Asserted Patents or any of the patents described in (b); and (d) all foreign counterpart patent applications and foreign counterpart patents to any of the Asserted Patents or any of the patents or applications described in (a) or (b) above.

13. The term “Patent Purchase Agreement” refers to the February 28, 2017 Patent Purchase Agreement entered between You and Onstream and disclosed by Onstream in an SEC filing, dated March 2, 2017. See Form 8-K (available at <https://www.sec.gov/Archives/edgar/data/919130/000151316217000057/form8k.htm>).

14. “Person” and “individual” mean any natural person or any business, legal or government entity, or association—including, but not limited to, any proprietorship, partnership, firm, company, or corporation.

15. “Date” means the exact day, month, and year if so ascertainable or, if not, the best approximation (including relationship to seasons and/or other events).

16. The terms “identify,” “identity,” and “identification” shall mean, as the context shall make appropriate:

- a. With respect to a person, the name, present or last known address, telephone number, occupation, and employer;

- b. With respect to a document, the type of document (e.g., letter, memorandum, book, etc.), date, author, general subject matter, the name of the company in the case of a corporate document, all Persons designated on the document to receive a copy or otherwise known to have received a copy, the document's present location, and the identity of the custodian of the original and each copy. If any such document was, but no longer is, in Your possession, custody, or control, or if any document was in existence but is no longer in existence due to destruction or otherwise, state how the document was disposed, the date of such disposition, the identity of the person responsible for making the decision as to such disposition, and the person responsible for carrying out the disposition;
- c. With respect to a telephone conversation, the full name, occupation, telephone number and address of each party to the telephone conversation, the date of the conversation, and the subject matter discussed;
- d. With respect to an oral conversation other than a telephone conversation, the full name, occupation, telephone number, and address of each party to such conversation, the date of the conversation, and the subject matter discussed;
- e. With respect to a corporation, partnership, association, or other entity, its full name, form of organization, present or last known address, and telephone number; and
- f. With respect to any event or action, the dates or approximate dates thereof, a description of what occurred, and all Persons involved.

17. "Document" shall have the meaning accorded by Rule 34(a) of the Federal Rules of Civil Procedure including, but not limited to all of the matters defined in Rule 1001 of the

Federal Rules of Evidence. By way of illustration and without limitation, documents include at least the following: originals, drafts and all non-identical copies of memoranda, reports, notes, emails, graphs, notebooks, correspondence, interoffice communications, letters, diaries, calendars, photographs, motion pictures, sketches, drawings, promotional material, technical papers, printed publications, patents, and all other writings, as well as all non-paper information storage means such as sound reproductions, computer inputs and outputs, tape, film and computer memory devices, as well as tangible things such as models, modules, prototypes, and commercially saleable products. If a draft document has been prepared in several copies that are not identical, or if the original identical copies are no longer identical due to subsequent notation, each non-identical document is a separate document.

18. “Thing” shall have the full meaning ascribed to it by the Federal Rules of Civil Procedure.

19. “Communication” means the transmittal of information (in the form of facts, ideas, inquiries or otherwise), and encompasses every medium of information transmittal, including oral, written, graphic, and electronic communication.

20. “Employee” means any director, trustee, officer, employee, partner, corporate parent, subsidiary, affiliate or servant of the designated entity, whether active or retired, full-time or part-time, current or former, and compensated or not.

21. “Concern,” “concerning,” “evidence,” “evidencing,” “relating to,” “relate to,” “relates to,” “related to,” “referring or relating to,” “referring to,” “regarding,” and “refer or relate to” shall be construed broadly to mean in whole or in part alluding to, responding to, concerning, relating to, connected with, involving, commenting on, in respect of, about, associated with, discussing, evidencing, showing describing, reflecting, analyzing, summarizing, memorializing,

consisting of, constituting, identifying, stating, tending to support, tending to discredit, referring to, or in any way touching upon.

22. Defendant's use of terms, phrases, and definitions is for convenience and no term, phrase, or definition shall be construed as an admission by Defendant.

23. As used herein, the term "facts" shall have its ordinary meaning and, pursuant to Federal Rule of Civil Procedure 33(a)(2), also shall mean related opinions, related contentions, and the application of the law to fact.

24. To bring within the scope of this Notice all conceivably relevant matters or information which might otherwise be construed to be outside the scope, the following apply:

- a. The singular of each word shall be construed to include its plural and vice-versa;
- b. "and" as well as "or" shall be construed both conjunctively as well as disjunctively;
- c. "each" shall be construed to include "every" and vice-versa;
- d. "any" shall be construed to include "all" and vice-versa;
- e. "including" shall be construed to mean "including, without limitation"; and
- f. the present tense shall be construed to include the past tense and vice-versa.

INSTRUCTIONS

1. If You object to any portion of the request, identify the portion to which You object, state the basis for the objection, and respond to the remainder. For example, if You object to any request by contending that it is overbroad, provide a response that narrows the request in a way that eliminates the purported over-breadth, and state the extent to which Your response has narrowed the request.

2. If any of the requested documents are withheld from production (including by redaction) including on the grounds of attorney-client privilege or the work-product doctrine, furnish a privilege log of such documents providing at least the following information for each such document: the document's date, signatory or signatories, author(s), addressee(s), each other person who received a copy, the subject-matter of the document, its location and custodian, and the basis for the claim of privilege. Such information should be supplied in sufficient detail to permit the requesting parties to assess the applicability of the privilege claimed.

3. Documents should be produced either (a) as they are kept in the ordinary course of business, complete with the original file folders, binders, or other containers in which they are stored (or legible copies of the labels from those folders, binders, or containers), or (b) organized according to the document request(s) to which they are responsive.

4. Electronic records and computerized information should be produced in an intelligible format or together with a description of the system from which it was derived sufficient to permit rendering the materials intelligible.

5. If no documents are responsive to a particular request, you should state that no responsive documents exist.

6. Any information disclosed by You pursuant to this request may, if appropriate, be protected by the provisions of the Protective Order between the parties in the Current Litigation (attached hereto as Attachment B), including producing documents with the designation, "CONFIDENTIAL," or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY."

DOCUMENTS REQUESTED

REQUEST NO. 1: Your curriculum vitae, résumé, and/or biography.

REQUEST NO. 2: Documents, things, and communications concerning any agreements relating to the Asserted Patents or any Related Patents, including but not limited to any agreements to sell, purchase, or assign the patents, or to assist with litigation relating to those patents.

REQUEST NO. 3: Documents, things, and communications relating to any offer, proposal, or request to license, assign, transfer, purchase, or sell the Asserted Patents or any Related Patents, including as part of a larger portfolio, including all communications with Onstream, Ocean Tomo, any prospective licensee, assignee, or purchaser, and any drafts of agreements.

REQUEST NO. 4: Documents, things, and communications relating to the Patent Purchase Agreement, including but not limited to Your communications and negotiations relating to the agreement and any drafts of agreements.

REQUEST NO. 5: Documents, things, and communications concerning any valuations of the Asserted Patents, any Related Patent, or any portfolio containing those patents.

REQUEST NO. 6: Documents, things, and communications concerning evaluations of the market for live video streaming.

REQUEST NO. 7: Documents, things, and communications concerning Onstream, including but not limited to documents concerning Your relationship with Onstream, Your negotiations and communications with Onstream, any agreements or drafts of agreements with Onstream, and any communications about the Current Litigation.

REQUEST NO. 8: Documents, things, and communications concerning Auction Video, Inc., Gregory Ellis, Kunio Toma, or Todd Brockman, including but not limited to Your relationship with each person and Your negotiations and communications with each person.

REQUEST NO. 9: Documents, things, and communications concerning Ocean Tomo, including but not limited to documents concerning Your relationship with Ocean Tomo and relating to the Asserted Patents.

DEPOSITION TESTIMONY TOPICS

TOPIC NO. 1: Subject-matter of all topics described in the above Document Request Nos. 1-9, including, but not limited to:

1. Agreements relating to the Asserted Patents or any Related Patents;
2. any offers or requests to license or transfer ownership of the Asserted Patents or any Related Patents;
3. any valuation of the Asserted Patents or any Related Patents, alone or as part of a portfolio;
4. any valuation of the live video streaming market;
5. the Patent Purchase Agreement, including the facts and circumstances relating to the negotiation of the terms of the agreement and the reasons why the Patent Purchase Agreement was terminated;
6. Your relationship with Onstream, including any negotiations and agreements between you and Onstream;
7. Your relationship with Auction Video, Inc., Gregory Ellis, Kunio Toma, and Todd Brockman, including any negotiations and communications with each person; and
8. Your relationship with Ocean Tomo, including any negotiations and communications between you and Ocean Tomo.

TOPIC NO. 2: Your efforts to locate, collect, and produce documents and things in response to the above Document Request Nos. 1-9.

TOPIC NO. 3: The destruction or disposal of documents and things that previously existed and that are responsive to the above Document Request Nos. 1-9.

TOPIC NO. 4: Any privilege log produced by You in response to the above Document Request Nos. 1-9, the documents and things identified on it, and the bases for withholding or redacting each such document or thing.