UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

EXPRESS MOBILE, INC., *Plaintiff,* v. eBAY INC., *Defendant.*	Case No. 6:20-cv-802 Jury Trial Demanded

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Express Mobile, Inc. ("Express Mobile" or "Plaintiff"), by its attorneys, demands a trial by jury on all issues so triable and for its Complaint against eBay Inc. ("eBay" or "Defendant") alleges the following:

NATURE OF THE ACTION

1. This action arises under 35 U.S.C. § 271 for eBay's infringement of Express Mobile's United States Patent Nos. 6,546,397 ("the '397 patent") and 7,594,168 ("the '168 patent").

THE PARTIES

2. Plaintiff Express Mobile, Inc. is an inventor-owned corporation organized under the laws of the State of Delaware with a place of business at 38 Washington Street, Novato, CA 94947.

3. Upon information and belief, eBay Inc. is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 7700 W Parmer Lane, Austin, TX 78729. eBay may be served through its registered agent for service in Delaware, Corporation Trust Center, 1209 Orange St., Wilmington, Delaware 19801.

4. Upon information and belief, eBay provides website marketing services to millions of customers, including both businesses and individuals.

JURISDICTION AND VENUE

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

6. Upon information and belief, jurisdiction and venue for this action are proper in the Western District of Texas.

7. This Court has personal jurisdiction over eBay because eBay has purposefully availed itself of the rights and benefits of the laws of this State and this Judicial District. Upon information and belief, eBay resides in the Western District of Texas by maintaining a regular and established place of business at 7700 W Parmer Lane, Austin, TX 78729.

8. This Court also has personal jurisdiction over eBay because eBay has done and is doing substantial business in this Judicial District, both generally and, upon information and belief, with respect to the allegations in this Complaint, including eBay's one or more acts of infringement in this Judicial District.

9. Venue is proper in this Judicial District under 28 U.S.C. §§ 1391(b) and (c) and § 1400(b). eBay committed acts of infringement through performing a method to allow users to produce Internet websites in the Western District of Texas and has a regular and established place of business in this District. eBay's office in Austin is a physical place in the District, it is an established location where eBay's business has been carried out for several years, and eBay publicly advertises its presence in the District.

PATENTS-IN-SUIT

10. Express Mobile is the lawful owner of all rights, title, and interest in the '397 patent titled "Browser Based Web Site Generation Tool and Run Time Engine," including the

right to sue and to recover for infringement thereof. The ’397 patent was duly and legally issued on April 8, 2003, naming Steven H. Rempell as the inventor. A true and correct copy of the ’397 patent is attached as Exhibit A.

11. The inventions of the ’397 patent solve technical problems related to website creation and generation. For example, the inventions enable the creation of websites through browser-based visual editing tools such as selectable settings panels which describe website elements, with one or more settings corresponding to commands. These features are exclusively implemented utilizing computer technology including a virtual machine.

12. The claims of the ’397 patent do not merely recite the performance of some pre-Internet business practice on the Internet. Instead, the claims of the ’397 patent recite inventive concepts that are rooted in computerized website creation technology, and overcome problems specifically arising in the realm of computerized website creation technologies.

13. The claims of the ’397 patent recite inventions that are not merely the routine or conventional use of website creation systems and methods. Instead, the inventions teach a browser-based website creation system and method in which the user-selected settings representing website elements are stored in a database, and in which said stored information is retrieved to generate said website.

14. The technology claimed in the ’397 patent does not preempt all ways of using website or web page authoring tools nor any other well-known prior art technology.

15. Accordingly, each claim of the ’397 patent recites a combination of elements sufficient to ensure that the claim amounts to significantly more than a patent on an ineligible concept.

16. Plaintiff is the lawful owner of all rights, title, and interest in United States Patent No. 7,594,168 titled “Browser Based Web Site Generation Tool and Run Time Engine,”

including the right to sue and to recover for infringement thereof. The ’168 patent was duly and legally issued on September 22, 2009, naming Steven H. Rempell as the inventor. A true and correct copy of the ’168 patent is attached as Exhibit B.

17. The inventions of the ’168 patent solve technical problems related to website creation and generation. For example, the inventions enable the creation of websites through browser-based build tools and a user interface. The inventions greatly improve the productivity of the designer utilizing an innovative implementation for styles. These features are implemented utilizing computer technology.

18. The claims of the ’168 patent do not merely recite the performance of some pre-Internet business practice on the Internet. Instead, the claims of the ’168 patent recite inventive concepts that are rooted in computerized website creation technology and overcome problems specifically arising in the realm of computerized website creation technologies.

19. The claims of the ’168 patent recite inventions that are not merely the routine or conventional use of website creation systems and methods. Instead, the inventions teach a browser-based website creation system including a server comprising a build engine configured to create and apply styles to, for example, a website with web pages comprised of objects.

20. The technology claimed in the ’168 patent does not preempt all ways of using website or webpage authoring tools nor any other well-known or prior art technology.

21. Accordingly, each claim of the ’168 patent recites a combination of elements sufficient to ensure that the claim amounts to significantly more than a patent on an ineligible concept.

22. In *Express Mobile v. KTree Computer Solutions*, a case filed in the Eastern District of Texas, the defendant, KTree Computer Solutions, brought a Motion for Judgment on the Pleadings asserting that the ’397 patent and the ’168 patent are invalid as claiming abstract

subject matter under 35 U.S.C. § 101. (C.A. 2:17-00128; Dkt. 9, 17, 22-27). The briefing associated with the motion is incorporated by reference into this Complaint.

23. After considering the respective pleadings, Magistrate Judge Payne recommended denial of KTree's motion, without prejudice, holding that "the claims appear to address a problem particular to the internet: dynamically generating websites and displaying web pages based on stored user-selected settings" and further stating "the asserted claims do not bear all of the hallmarks of claims that have been invalidated on the pleadings by other courts in the past. For example, the claims are not merely do-it-on-a-computer claims." (Dkt. 29, attached as Exhibit C.) No objection was filed to the Magistrate Judge's report and recommendation and the decision therefore became final.

24. In *Express Mobile v. Pantheon Systems, Inc*., a case filed in the Northern District of California, the defendant, Pantheon Systems, Inc., brought a Motion to Dismiss Plaintiff's First Amended Complaint asserting that the '397 patent and the '168 patent were directed to the abstract idea of creating and displaying webpages based upon information from a user with no further inventive concept and purportedly ineligible for patenting under 35 U.S.C. § 101. (Case No. 3:18-CV-04688-RS; Dkt. 26, 32 and 34). The briefing associated with the motion is incorporated by reference into this Complaint.

25. In *Express Mobile v. Code and Theory LLC*, a case filed in the Northern District of California, the defendant, Code and Theory LLC, brought a Motion to Dismiss Plaintiff's Complaint asserting that the '397 patent and the '168 patent are not subject matter eligible under 35 U.S.C. § 101 as a matter of law. (Case No. 3:18-CV-04679-RS; Dkt. 35, 40 and 41). The briefing associated with the motion is incorporated by reference into this Complaint.

26. After a hearing and a consideration of the respective pleadings, Hon. Richard Seeborg denied both motions holding that:

- "The patents here are directed at a purportedly revolutionary technological solution to a technological problem—how to create webpages for the internet in a manner that permits 'what you see is what you get' editing, and a number of other alleged improvements over the then-existing methodologies." *Id*. at 5.

- The claims of the '397 and '168 patents are "directed to a specific improvement to the way computers operate," and "it simply cannot be said on the present record that the claims are drawn so broadly as to be divorced from the potentially patent-eligible purported technological improvements described in the specification." *Id*. at 5-6. (Case No. 3:18-CV-04679-RS; Dkt.45; Case No. 3:18-CV-04688-RS Dkt.40; attached as Exhibit D.)

27. In Case Nos. 1:18-CV-01173-RGA and 1:18-CV-01175-RGA, infringement actions filed by Plaintiff in the District of Delaware, the respective defendants in those actions, Dreamhost LLC and Hostway Services, Inc., brought Motions to Dismiss claims of the '397 and '168 patents on the basis of invalidity under 35 U.S.C. § 101. (Case No. 1:18-CV-01173-RGA D.I. 14, D.I. 18-21 and 24 Case No. 1:18-CV-01175-RGA D.I. 17-19 and 23). The briefing associated with the motion is incorporated by reference into this Complaint.

28. After consideration of the respective pleadings, Judge Andrews denied both motions in a joint order, pointing to factual allegations of inventiveness identified by the Plaintiff, and an expert declaration explaining inventiveness of the claims, noting that such factual issues preclude a finding of invalidity on a motion to dismiss. (Case No. 1:18-CV-01173-RGA D.I. 43; Case No. 1:18-CV-01175-RGA D.I. 42; attached as Exhibit E.).

BACKGROUND

29. Plaintiff Express Mobile is a leader in the business of developing mobile app and web site design and creation platforms, and has intellectual property including U.S. patents relating to certain tools useful in the field. Express Mobile is managed by individuals with decades of technology and business experience. The Chairman of the Board and CTO of Express Mobile, Steve Rempell, is the inventor of Express Mobile's patent portfolio. Mr.

Rempell has over 50 years of experience in technology companies, with much of that work focused on web-based technologies and applications.

30. Defendant eBay is a well-known company that facilitates consumer-to-consumer and business-to-consumer sales through its website. eBay has grown rapidly and now generates billions of dollars of revenue per year.

COUNT I - INFRINGEMENT OF U.S. PATENT NO. 6,546,397

31. Plaintiff incorporates by reference the allegations contained in paragraphs 1 to 30 above.

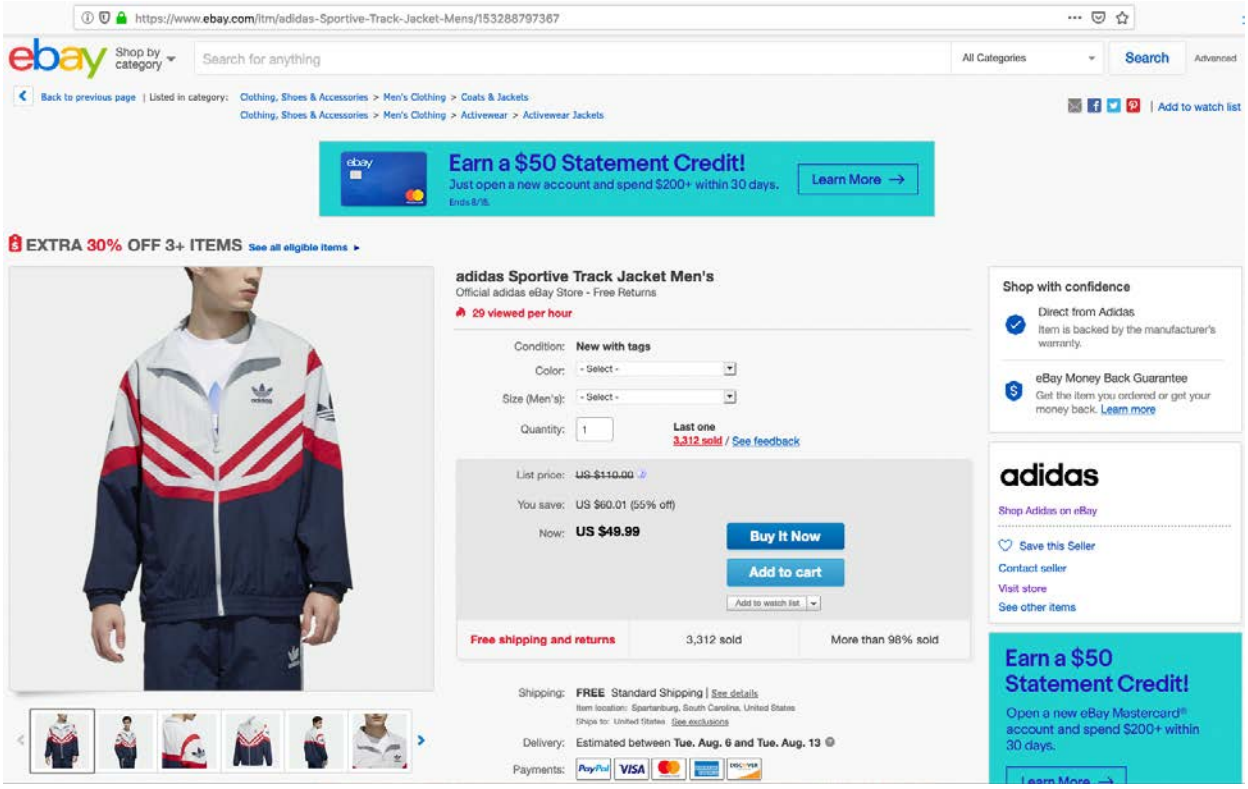
32. Using the technology claimed by the ’397 patent, eBay’s listings (e.g., all registered sellers and eBay stores) including all hardware and software used and/or generated to provide these functionalities (collectively, the “Accused Instrumentality”) performed a method to allow users to produce Internet websites by letting users select settings representing website elements, storing these settings in a database, and retrieving stored information to generate websites.

33. During relevant time periods, eBay performed a method to allow users to produce Internet websites which infringed, either literally or under the doctrine of equivalents, one or more claims of the ’397 patent in violation of 35 U.S.C. § 271(a).

34. Upon information and belief, eBay directly infringed at least claim 1 of the ’397 patent through its Accused Instrumentality that provided browser-based website authoring tools in which the user-selected settings representing website elements are stored in a database and in which said stored information is retrieved to generate said website.

35. The Accused Instrumentality performed a method to allow users to produce Internet websites on and for computers having a browser and a virtual machine capable of generating displays. For example, the Accused Instrumentality enabled a seller-user to produce

a website on the eBay site through a browser on the seller-user's computer. A seller-user could register through eBay and select an item to sell. This resulted in a web page listing for an item for sale. This functionality is available to all registered sellers, including sellers who use eBay stores.

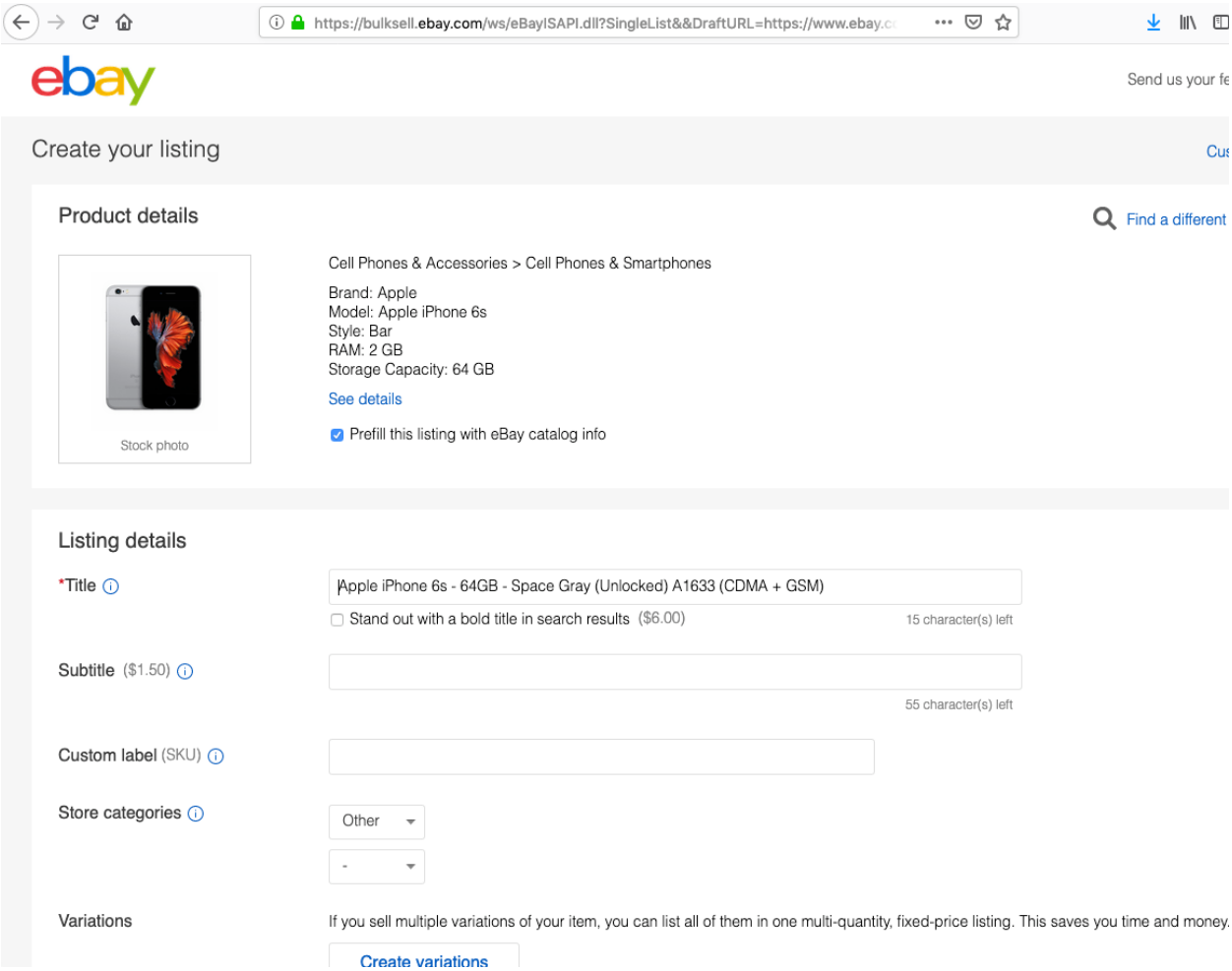


Source: https://www.ebay.com/itm/adidas-Sportive-Track-Jacket-Mens/153288797367 (example of a final listing by Adidas for a Track Jacket)

36. eBay's list of compatible browsers includes the latest versions of the following: Microsoft Internet Explorer, Microsoft Edge, Mozilla Firefox, Apple Safari and Google Chrome. https://www.ebay.com/help/policies/technical-issues/technical-issues?id=4220. All of these browsers rely on browser engines to interpret and execute JavaScript and HTML to render web pages on a computer. Internet Explorer has relied on Trident (code name for MSHTML) which has included the Chakra JavaScript Engine (http://en.wikipedia.org/wiki/MSHTML). Edge relies on EdgeHTML (which also includes the Chakra JavaScript Engine).

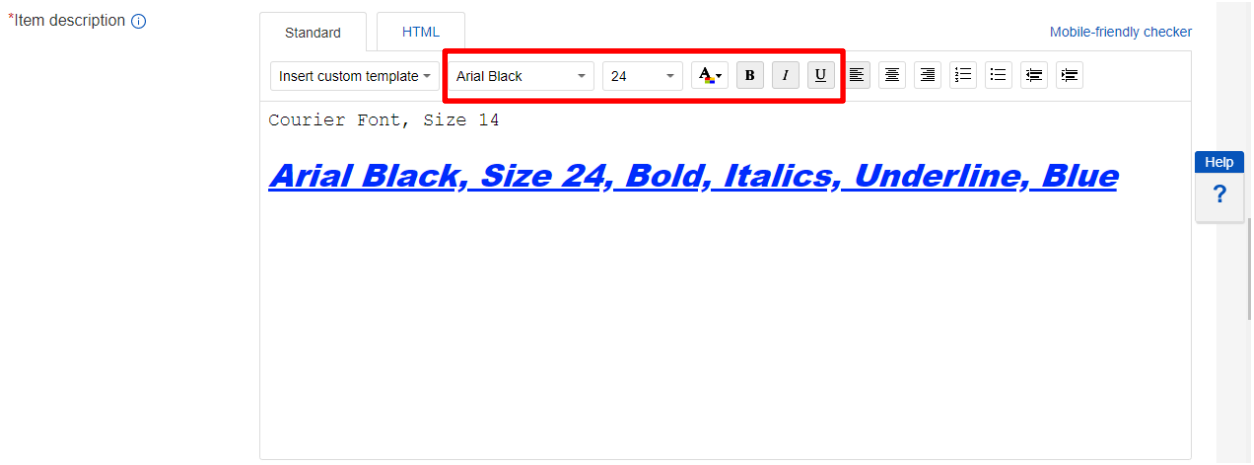
https://docs.microsoft.com/en- us/microsoft-edge/dev-guide). Safari and Chrome rely on Webkit (which includes WebCore and JavaScript Core. http://en.wikipedia.org/wiki/WebKit). Firefox relies on Gecko (which includes Spidermonkey. http://www.mozilla.org/projects/technologies.html).

37. The Accused Instrumentality presented a viewable menu having a user selectable panel of settings describing elements on a website, said panel of settings being presented through a browser on a computer adapted to accept one or more of said selectable settings in said panel as inputs therefrom, and where at least one of said user selectable settings in said panel corresponds to commands to said virtual machine. For example, when a user created a listing, the Accused Instrumentality presented a visual interface with various options to add descriptions, add details, or upload an image, which are commands to the virtual machine to change the contents of the listing, and thus the display of the website.



Source:
https://bulksell.ebay.com/ws/eBayISAPI.dll?SingleList&&DraftURL=https://www.ebay.com/sh/lst/draft s&ReturnURL=https://www.ebay.com/sh/lst/active

38. The Accused Instrumentality-compatible browsers all include browser engines (which are process virtual machines) that execute code that generates and displays the user-authored web pages on a particular computer, the settings that a user-author selects through the eBay visual editor necessarily correspond to virtual machine commands. For example, JavaScript and HTML code were used by the browser's engine to generate and display an eBay web page for a user viewing the web page on a computer, the author's selections through the WYSIWYG editor buttons (such as font, font size, text style, and color) being reflected in the displayed page. The WYSIWYG editor buttons are created with Javascript.



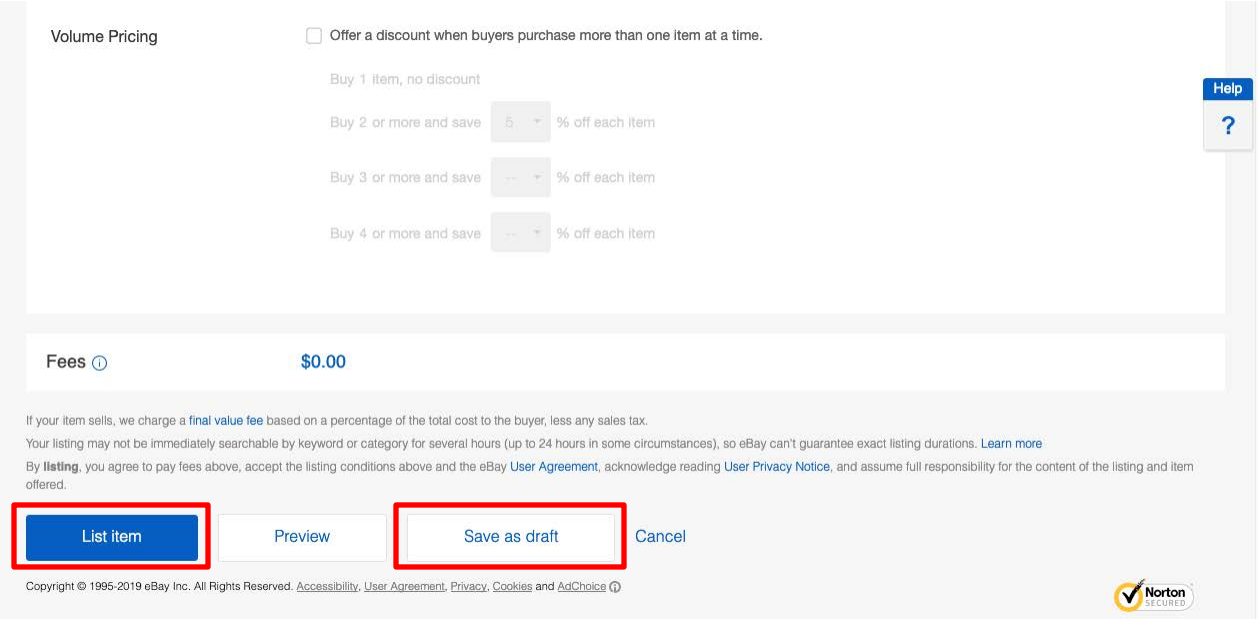
Source:
https://bulksell.ebay.com/ws/eBayISAPI.dll?SingleList&&DraftURL=https://www.ebay.com/sh/lst/draft s&ReturnURL=https://www.ebay.com/sh/lst/active

Source:
https://bulksell.ebay.com/ws/eBayISAPI.dll?SingleList&&DraftURL=https://www.ebay.com/sh/lst/draft s&ReturnURL=https://www.ebay.com/sh/lst/active

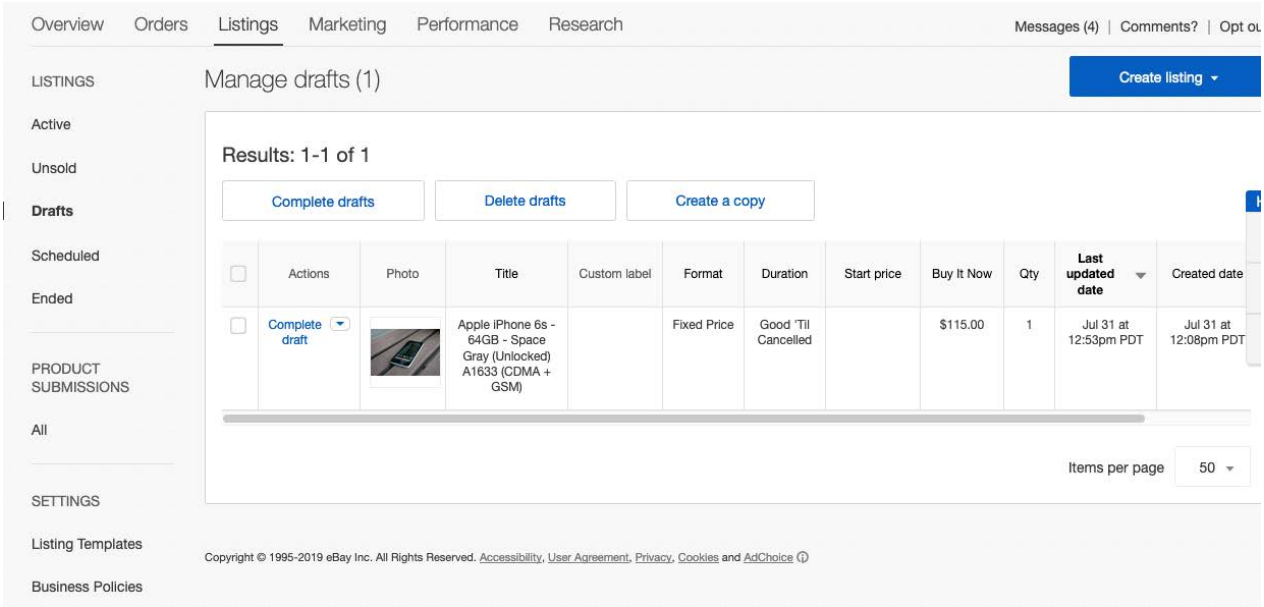
39. The Accused Instrumentality generated a display in accordance with one or more user selected settings substantially contemporaneously with the selection thereof. For example, when a user selected the font settings as shown above, the changes were reflected in the WYSIWYG display as the user changed them.

40. The Accused Instrumentality stored information representative of said one or more user selected settings in a database. For example, when a user changed the font from the

above user interface, the Accused Instrumentality saved information in a database, at least once the user clicked “List Item” or “Save as draft.”

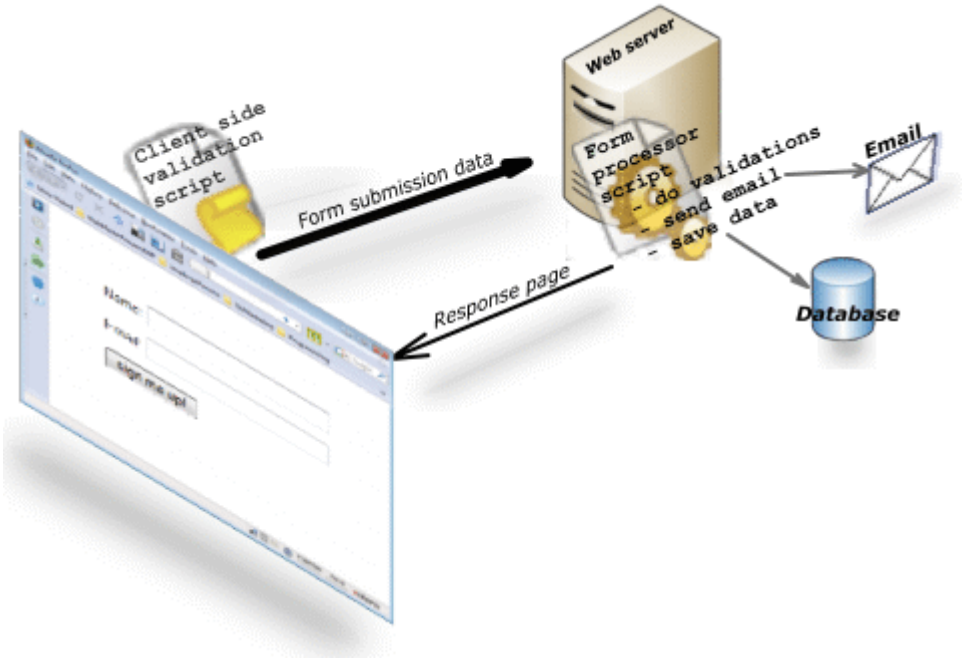


Source: https://bulksell.ebay.com/ws/eBayISAPI.dll?SingleList&&DraftURL=https://www.ebay.com/sh/lst/draft s&ReturnURL=https://www.ebay.com/sh/lst/active



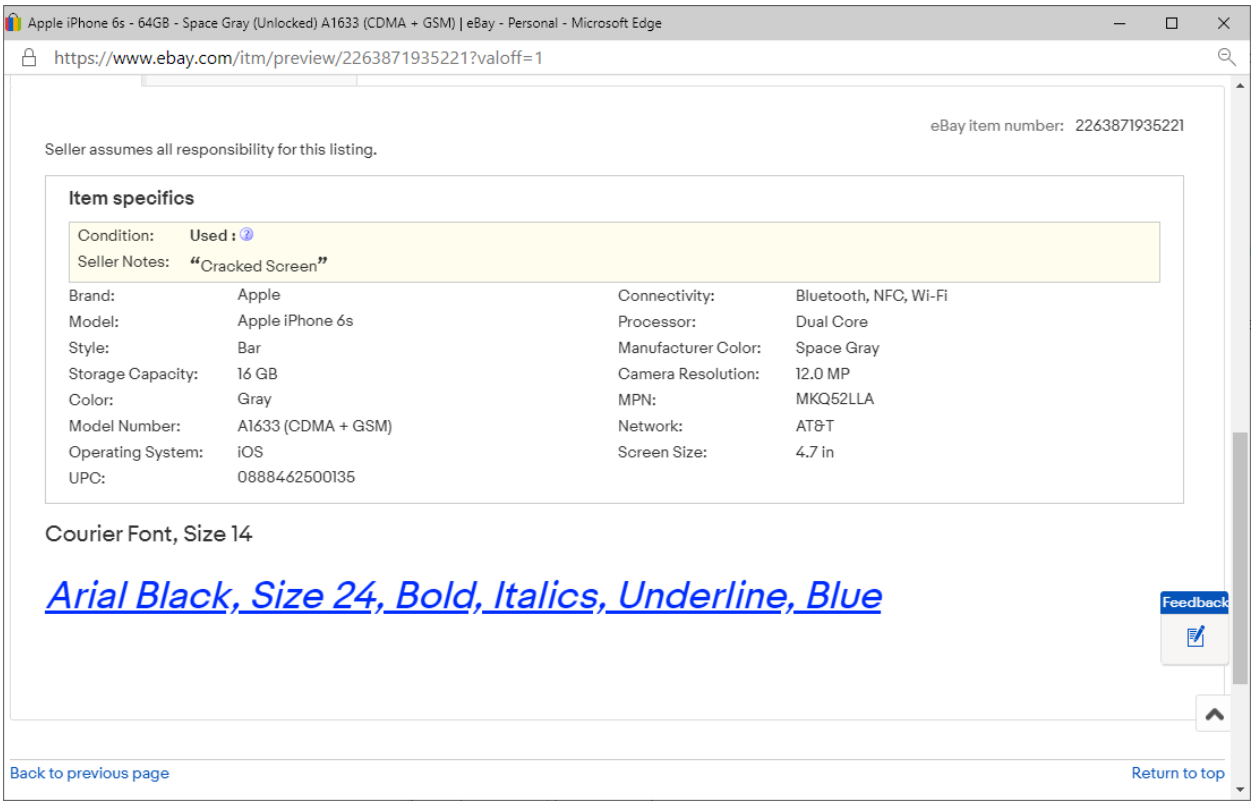
Source: https://www.ebay.com/sh/lst/drafts (after saving as draft, the listing, including user selected settings such as font styles, appeared in a user’s drafts. Drafts were saved server-side in a database because they can be accessed from different browsers in different locations)

41. Because at least some of the Accused Instrumentality runtime files included several Asynchronous JavaScript And XML ("AJAX") commands designed for pulling data from a database to display a web page, the server-side script that processed this form would send a request for data to an eBay database server from which it could be retrieved. The following diagram is from a published web tutorial explaining the typical process (using an email "form" as the example):



Source: http://www.javascript-coder.com/html-form/html-form-tutorial-p1.phtml

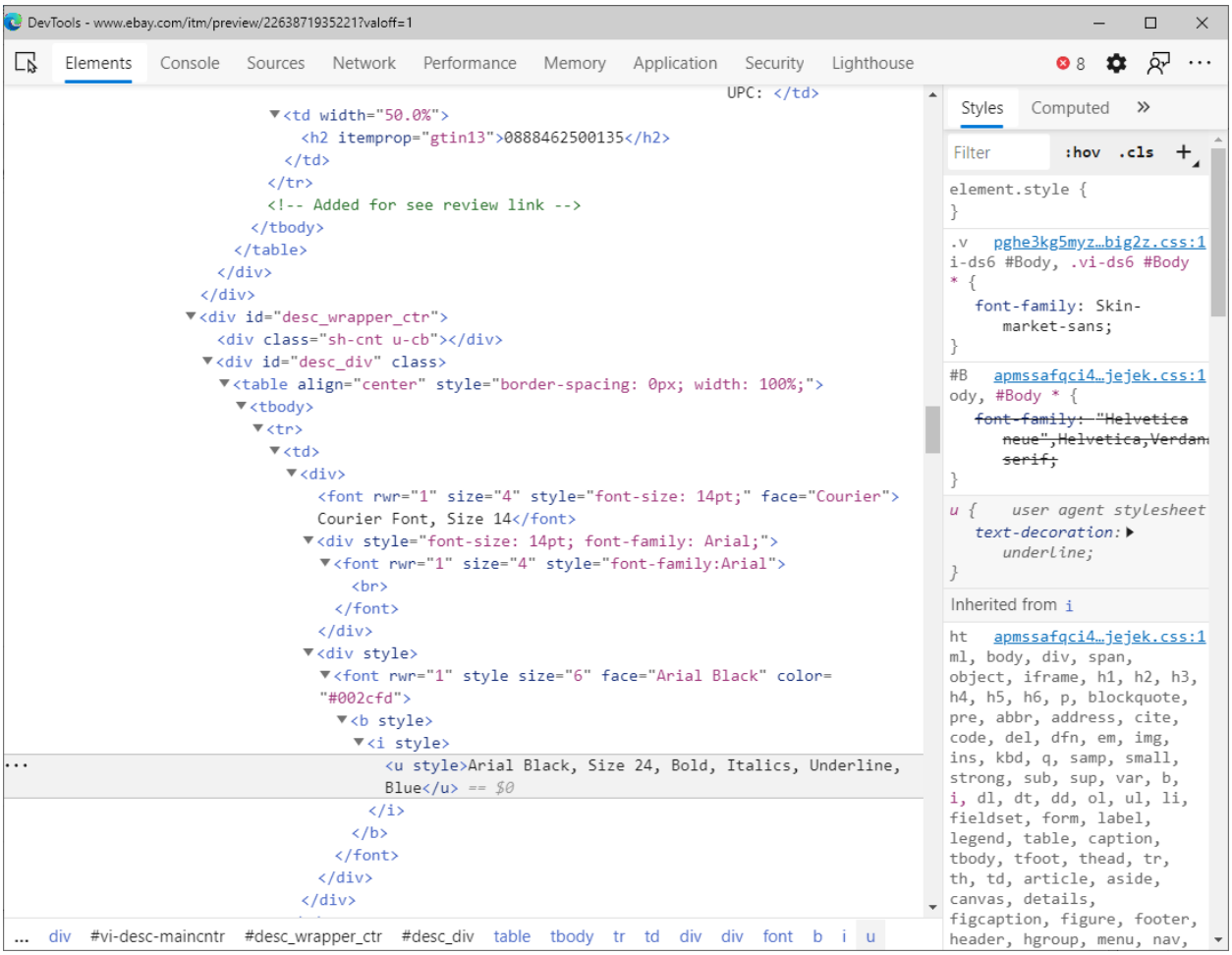
42. The Accused Instrumentality generated a website at least in part by retrieving said information representative of said one or more user selected settings stored in said database. For example, after the user hit "Preview," the user's sales listing was generated, at least in part by having retrieved user selected settings such as the font settings shown above.



Source: https://www.ebay.com/itm/preview/1893755218411?valoff=1

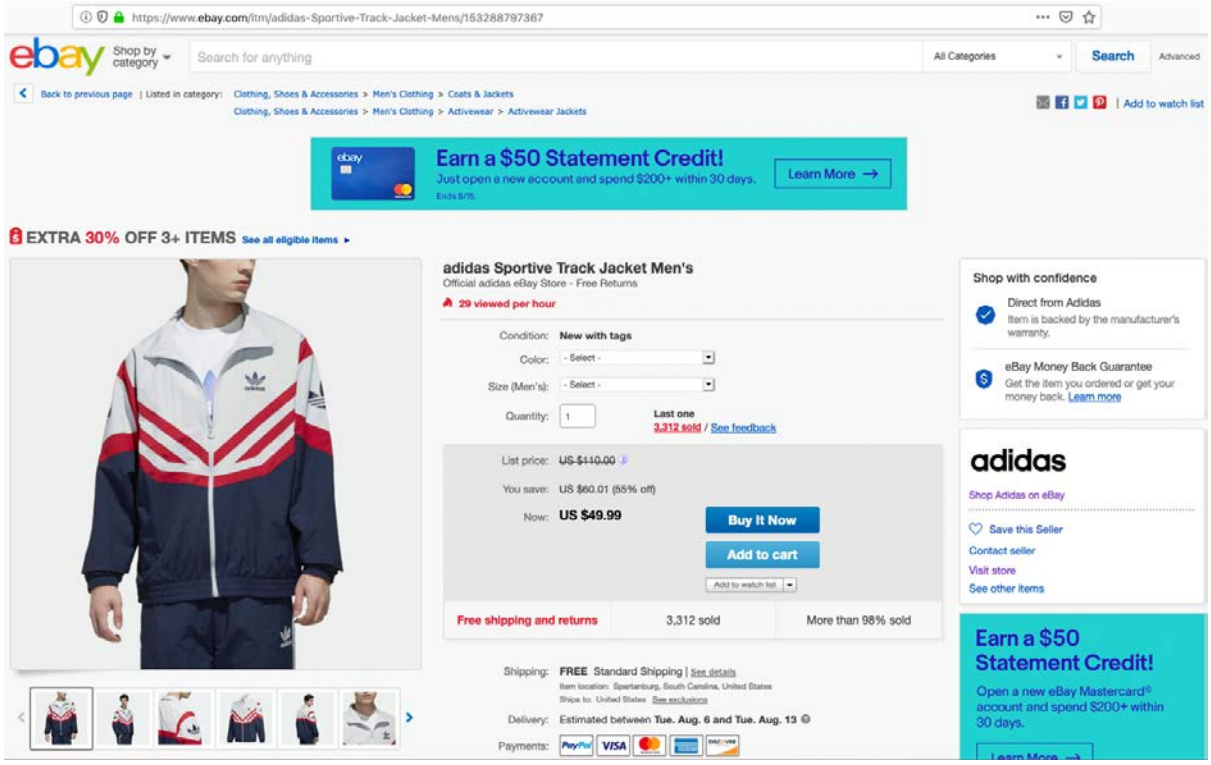
43. When a user pressed "List Item" instead of "Preview" to create a new listing, the Accused Instrumentality also used this information that is stored in its database to create the listing webpage.

44. The Accused Instrumentality built one or more web pages to generate said website from at least a portion of said database and at least one run time file, where said at least one run time file utilized information stored in said database to generate virtual machine commands for the display of at least a portion of said one or more web pages. For example, the generation of the auction webpage by a buyer/user at run-time reads information from the database, such as by retrieving settings such as font styles.



Source: https://www.ebay.com/itm/preview/1893755218411?valoff=1

45. As another example, the visible source also referenced additional runtime JavaScript files, such as the JavaScript files used to zoom in to an image on a listing. The JavaScript and the HTML for having generated and displayed the final page necessarily represented virtual machine commands because they relied on the underlying browser engine for execution. The HTML code is used by the browser's engine to render the page. The JavaScript Code would rely on the browser engine's component JavaScript engine to execute and to either display a portion of the page directly, or to generate HTML to be executed for display by the main layout functions of the engine.



Source: https://www.ebay.com/itm/adidas-Sportive-Track-Jacket-Mens/153288797367 (showing a final listing by Adidas)

46. eBay was made aware of the ’397 patent and its infringement thereof at least as early as December 20, 2018 when Express Mobile provided notice of eBay’s infringement of the ’397 patent to Ms. Marie Oh Huber, SVP and General Counsel of eBay. Upon information and belief, since at least the time eBay received notice, eBay had directly infringed at least claim 1 of the ’397 patent and induced others to infringe at least claim 1 of the ’397 patent under 35 U.S.C. § 271(b) by, among other things, and with specific intent or willful blindness, by having actively aided and abetted others to infringe, including but not limited to eBay’s clients, customers, and end users, whose use of the Accused Instrumentality constituted direct infringement of at least one claim of the ’397 patent. In particular, eBay’s actions that aided and abetted others such as customers and end users to infringe included advertising and distributing the Accused Instrumentality and providing instruction materials, training, and services regarding the Accused Instrumentality. *See e.g.*, https://www.ebay.com/help/home,

https://developer.ebay.com, https://pages.ebay.com/seller-center/, https://export.ebay.com/en/start-sell/first-steps/how-create-listing/how-create-listing/, https://www.ebay.com/help/listings/creating-managing-listings/creating-listing?id=4105, and related domains and subdomains. Upon information and belief, eBay had engaged in such actions with specific intent to cause infringement or with willful blindness to the resulting infringement because eBay had actual knowledge of the ’397 patent and knowledge that its acts were inducing infringement of the ’397 patent since at least the date eBay received notice that such activities infringed the ’397 patent.

47. eBay is liable as a contributory infringer of the ’397 patent under 35 U.S.C. § 271(c) by having offered to sell, sold and imported into the United States website or web page authoring tools to be especially made or adapted for use in an infringement of the ’397 patent. The Accused Instrumentality is a material component for use in practicing the ’397 patent, is specifically made and is not a staple article of commerce suitable for substantial non-infringing use.

48. Upon information and belief, since the date of its receipt of notice, eBay’s infringement of the ’397 patent has been willful and intentional under the standard announced in *Halo Elecs., Inc. v. Pulse Elecs., Inc.*, 136 S.Ct. 1923, 195 L.Ed 2d 278 (2016). Since at least December 20, 2018, eBay has willfully infringed the ’397 patent by refusing to take a license and having continued to make, use, test, sell, license, and/or offer for sale/license the Accused Instrumentality. eBay has been aware that it infringes the ’397 patent since at least December 20, 2018 and instead of taking a license, eBay opted to make the business decision to “efficiently infringe” the ’397 patent. In doing so, eBay willfully infringed the ’397 Patent.

49. eBay’s infringement has damaged and injured Express Mobile.

COUNT II - INFRINGEMENT OF U.S. PATENT NO. 7,594,168

50. Plaintiff incorporates by reference the allegations contained in paragraphs 1 to 49 above.

51. eBay has manufactured, used and/or provided and continues to manufacture, use and/or provide its eBay.com platform (the "Accused Instrumentality") that infringes, either literally or under the doctrine of equivalents, one or more claims of the '168 patent in violation of 35 U.S.C. § 271(a).

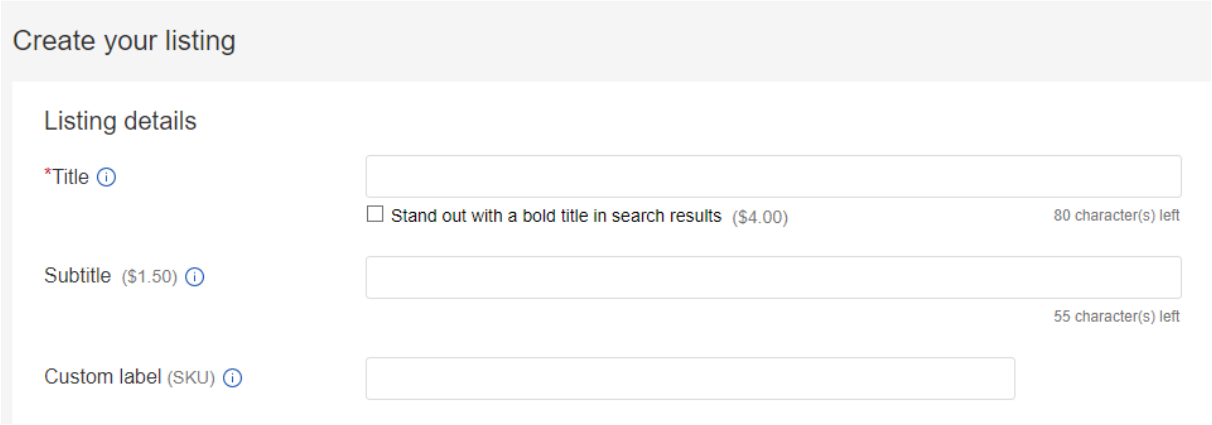
52. Upon information and belief, eBay has directly infringed and is directly infringing at least claim 1 of the '168 patent by making and using a system for assembling a website.

53. The Accused Instrumentality makes and provides a system for assembling a web site. For example, the Accused Instrumentality enables users to create eBay listings and stores, which are web sites, through a browser on the user's computer interacting with the server facility hosted by eBay.

Why create your eBay Store?

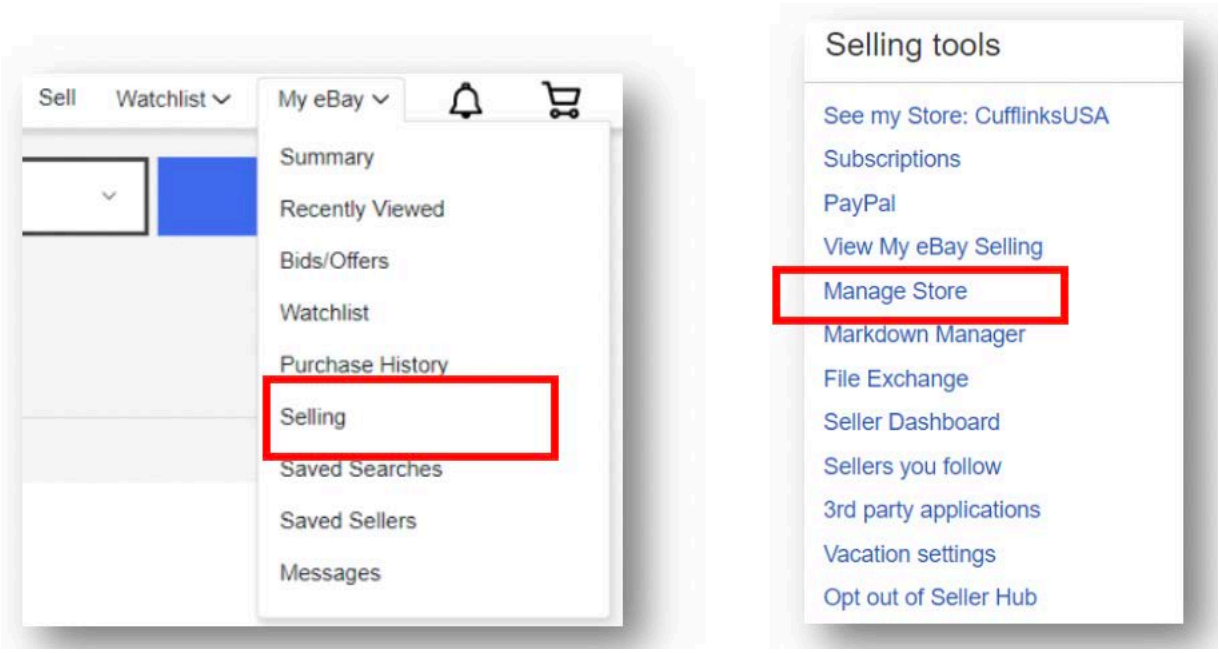
- **Save.** Get free listings and lower final value fees.*
- **Boost traffic.** Drive buyers to your listings and Store.
- **Brand yourself.** Design a custom homepage to bring in new and repeat buyers.
- **Optimize listings.** Use exclusive, powerful tools to optimize your listings.
- **Vacation hold.** Make your absence as seamless as possible for your buyers.
- **Dedicated customer service.** eBay Anchor Store subscribers have access to white-glove customer service.**
- **A competitive edge.** Complimentary access to Terapeak product and pricing insights.**

Source: https://pages.ebay.com/seller-center/run-your-store/why-get-an-ebay-store.html



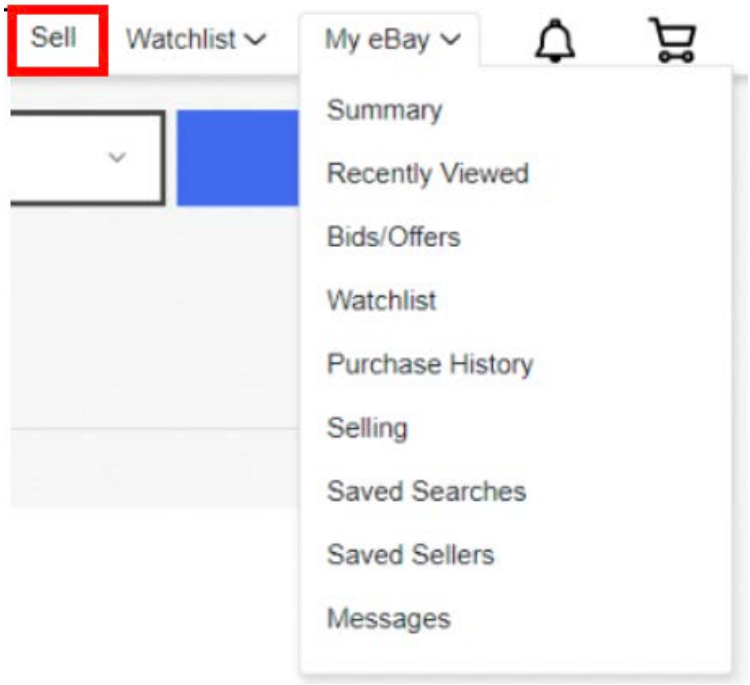
Source: https://bulksell.ebay.com/ws/eBayISAPI.dll?SingleList&&DraftURL=https://www.ebay.com/sh/lst/drafts&ReturnURL=https://www.ebay.com/sh/lst/active

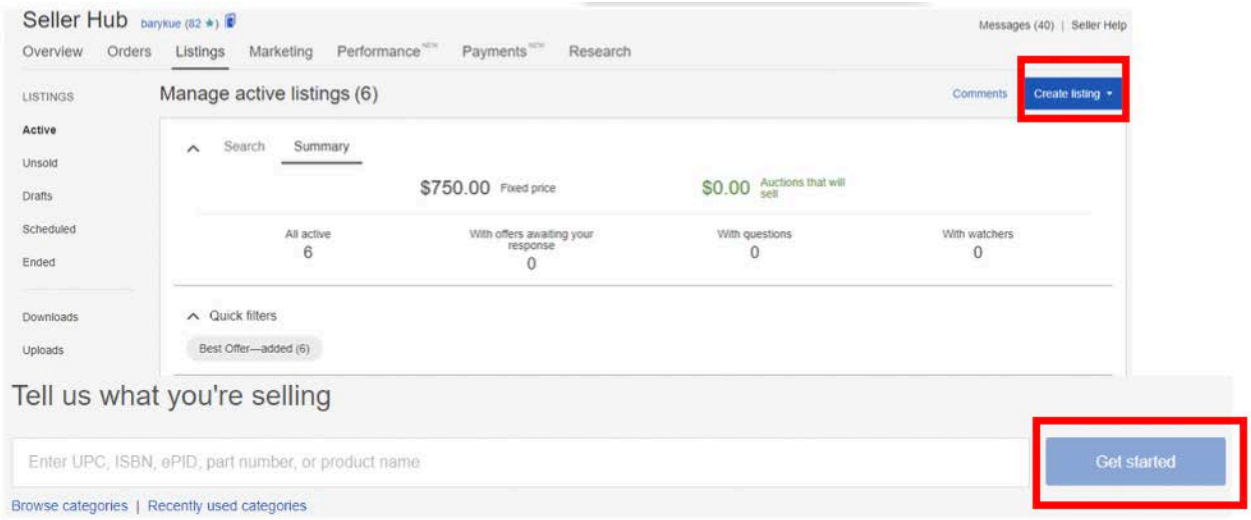
54. The Accused Instrumentality has a server comprising a build engine. For example, on its servers, the Accused Instrumentality provides a build engine that allows users to manage and customize their sites with different customization options. A user may navigate to their store by selecting the "Selling" option in the My eBay dropdown, and then clicking "Manage Store" in Selling tools. This will open a user's "Manage My Store" page, where the user can create and edit their store.

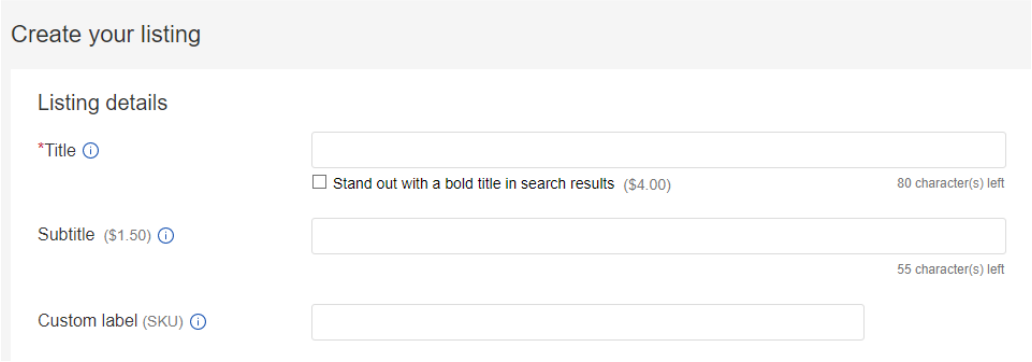


Source: https://www.ebay.com/sh/ovw

55. A user can create a new auction listing by clicking the "sell" button, "Create listing," and then entering a product in the listing field.

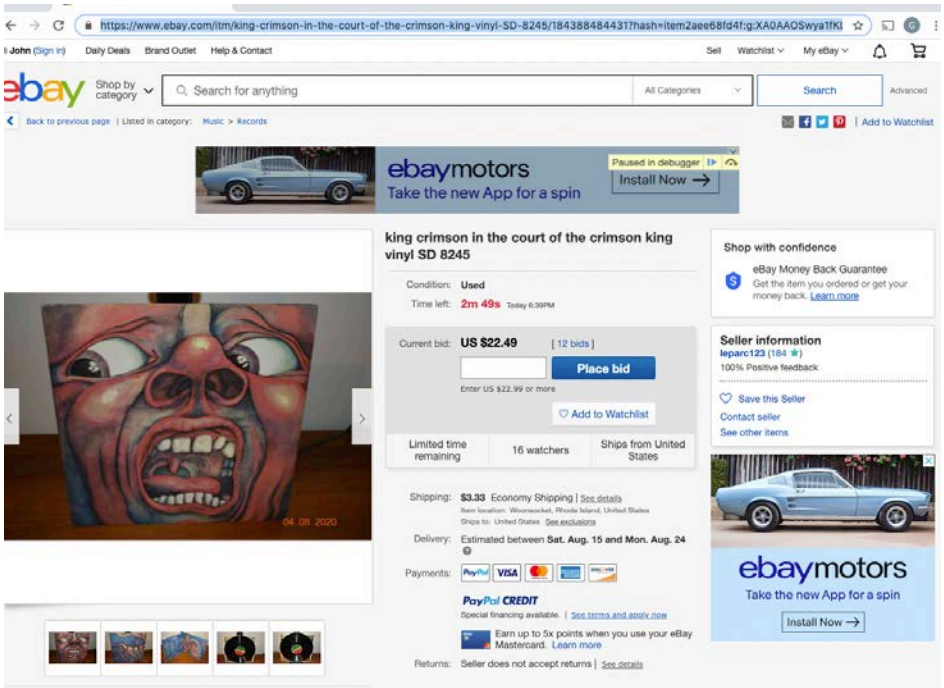






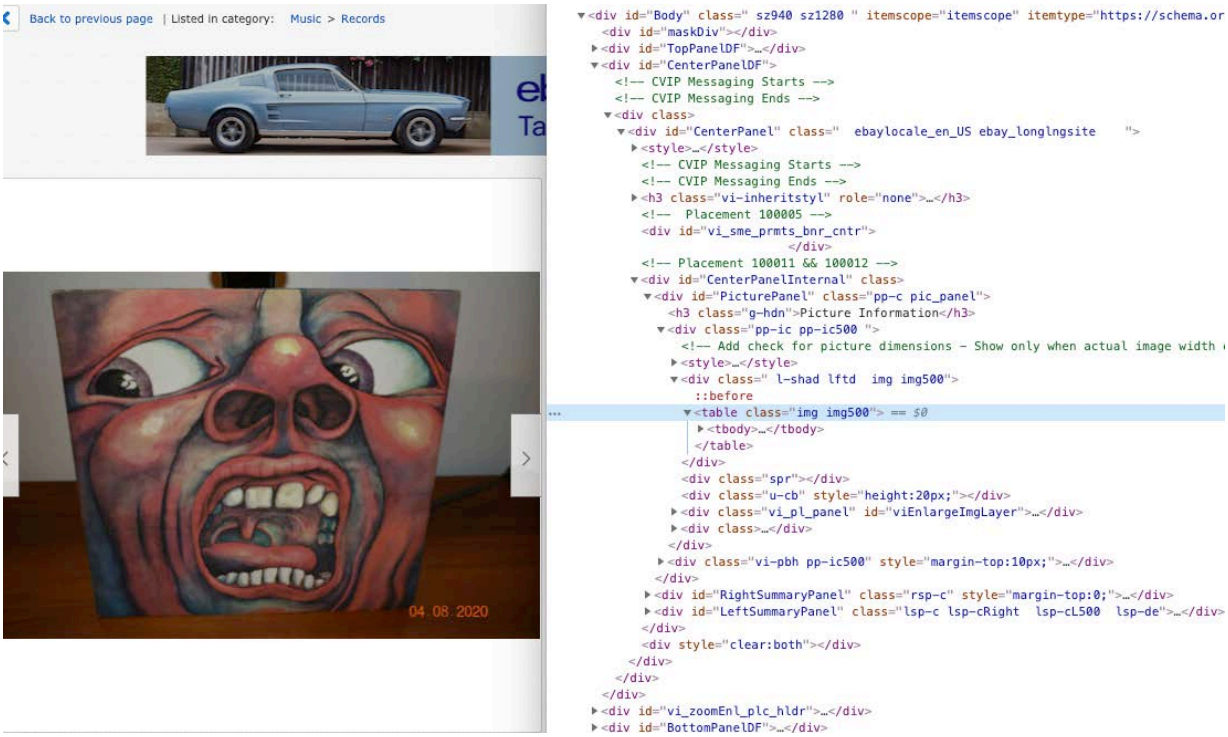
Source:
https://bulksell.ebay.com/ws/eBayISAPI.dll?SingleList&&DraftURL=https://www.ebay.com/sh/lst/drafts&ReturnURL=https://www.ebay.com/sh/lst/active

56. The Accused Instrumentality's build engine is configured to accept user input to create a web site, the web site comprising a plurality of web pages, each web page comprising a plurality of objects to accept user input to associate a style with objects of the plurality of web pages. The Accused Instrumentality's build engine accepts user input to create a web site comprising a plurality of web pages. For example, the Accused Instrumentality includes a plurality of individual auction pages. Individual auction pages are comprised of a plurality of objects, such as at least the main image and sub-images.



Source: https://www.ebay.com/itm/king-crimson-in-the-court-of-the-crimson-king-vinyl-SD-8245/184388484431?hash=item2aee68fd4f:g:XA0AAOSwya1fKLv1

57. The Accused Instrumentality accepts user input to associate a style with objects. For example, several classes, each with different styles, are associated with the auction image object.

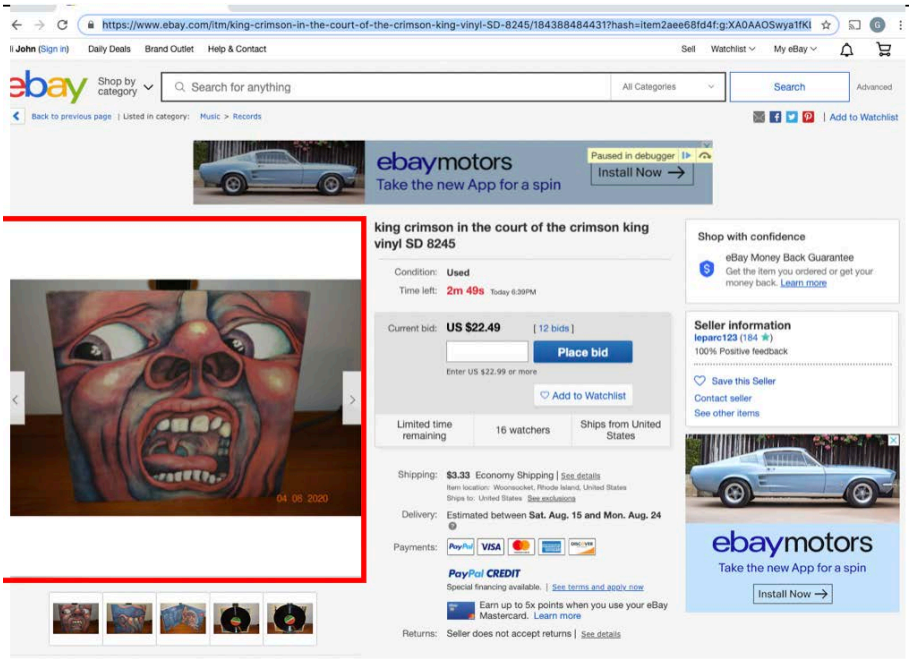


Source: https://www.ebay.com/itm/king-crimson-in-the-court-of-the-crimson-king-vinyl-SD-8245/184388484431?hash=item2aee68fd4f:g:XA0AAOSwya1fKLv1

58. When creating an auction, users may also edit their photos using the Accused Instrumentality's build engine, which is associating a style with the image objects.

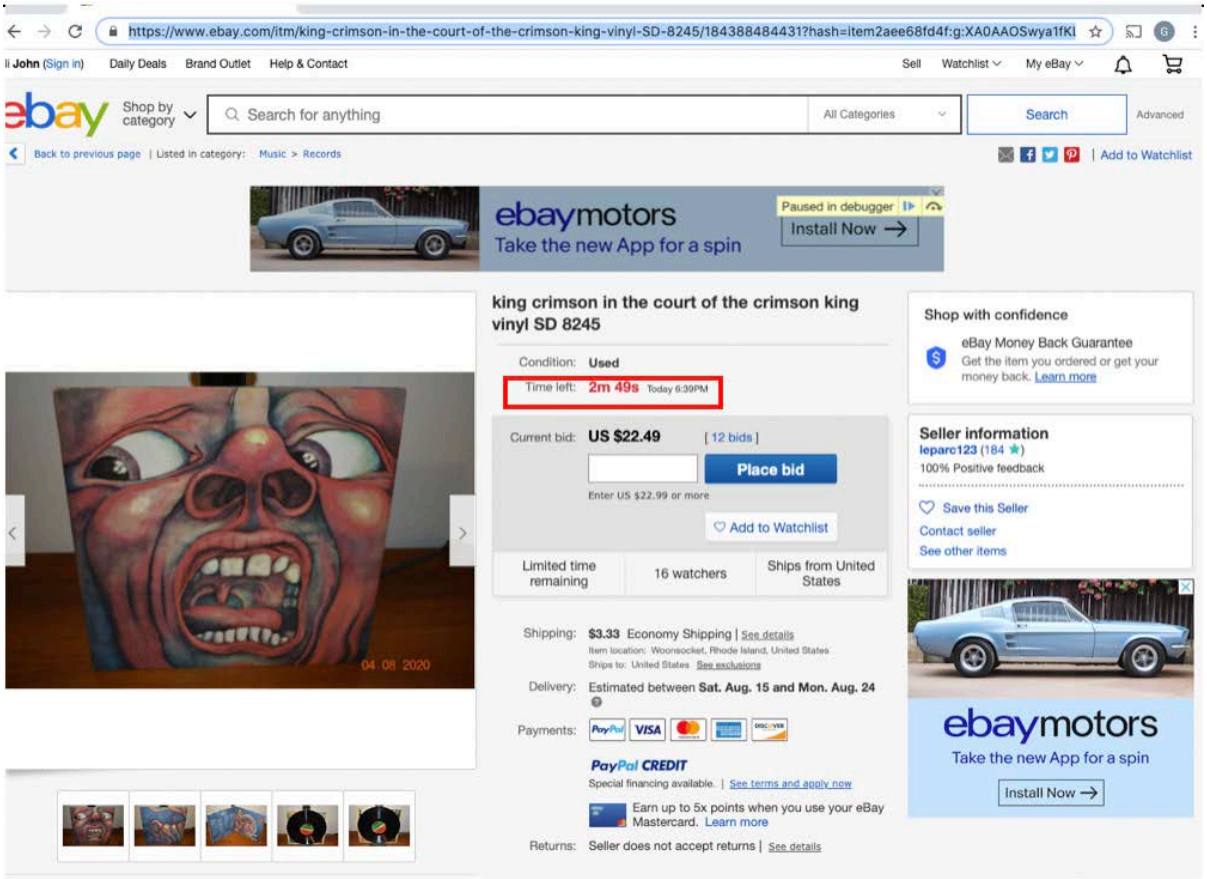
Source: https://bulksell.ebay.com/ws/eBayISAPI.dll?SingleList&&DraftURL=https://www.ebay.com/sh/lst/drafts&ReturnURL=https://www.ebay.com/sh/lst/active

59. Each web page comprises at least one button object or at least one image object. For example, the auction pages comprise an auction image object that comprises an image object.



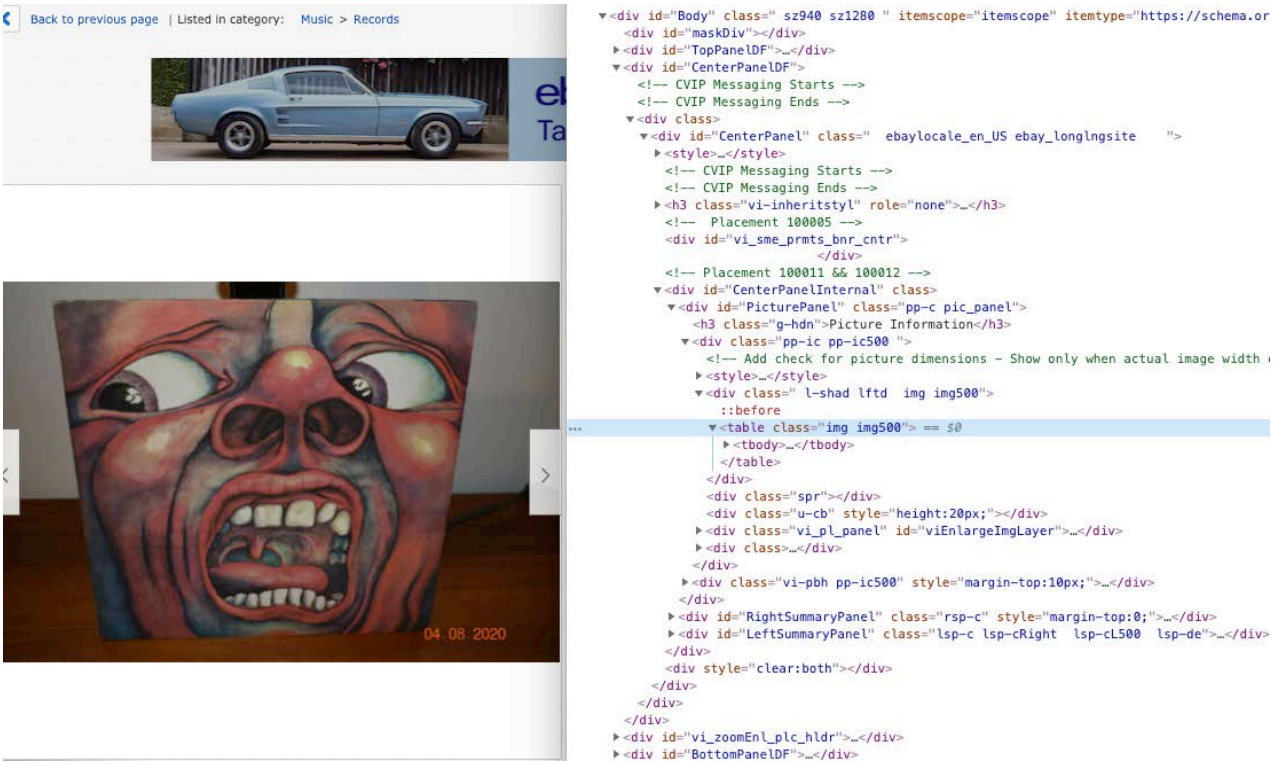
Source: https://www.ebay.com/itm/king-crimson-in-the-court-of-the-crimson-king-vinyl-SD-8245/184388484431?hash=item2aee68fd4f:g:XA0AAOSwya1fKLv1

60. The at least one button object or at least one image object is associated with a style that includes values defining transformations and time lines for the at least one button object or at least one image object. The auction image object in the listing for "king crimson in the court of the crimson king vinyl SD 8245" comprises an image object, and is associated with a style that includes values defining transformations and time lines. As shown below, the "time left" indicator is counting down to the end of the auction (here, showing 2m 49s left).

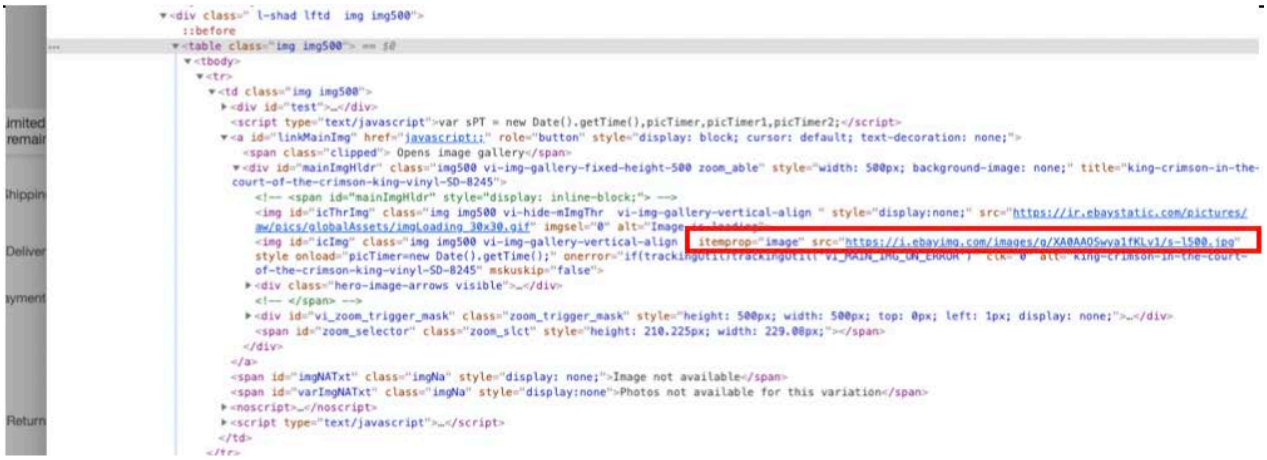


Source: https://www.ebay.com/itm/king-crimson-in-the-court-of-the-crimson-king-vinyl-SD-8245/184388484431?hash=item2aee68fd4f:g:XA0AAOSwya1fKLv1

61. As seen in the HTML source, the underlying image being displayed as part of this object is "img500."

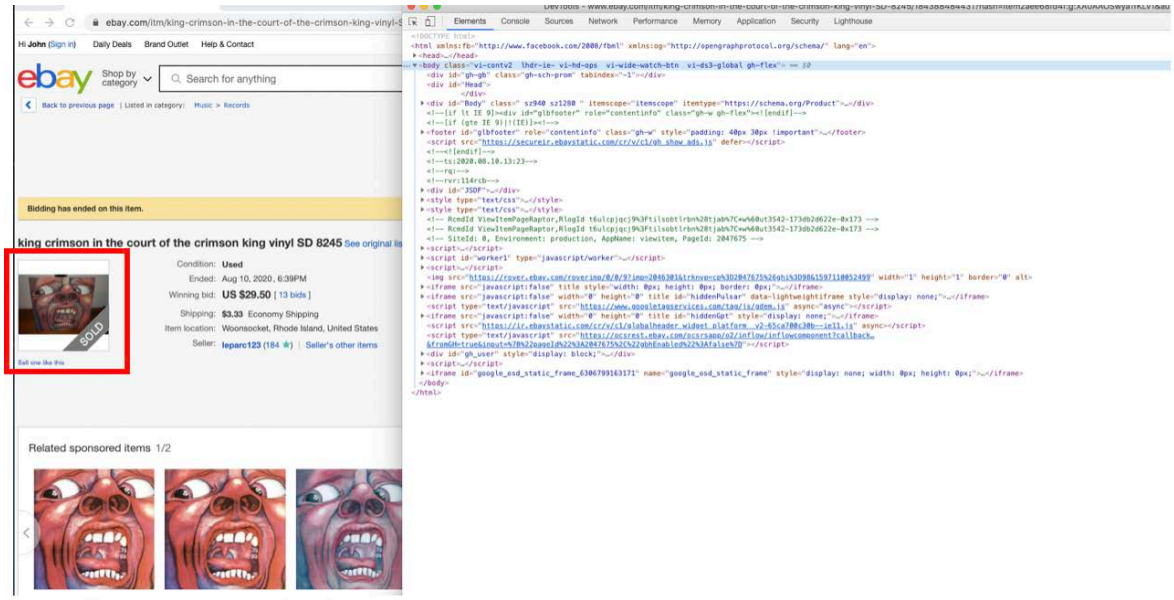


Source: https://www.ebay.com/itm/king-crimson-in-the-court-of-the-crimson-king-vinyl-SD-8245/184388484431?hash=item2aee68fd4f:g:XA0AAOSwya1fKLv1



Source: https://www.ebay.com/itm/king-crimson-in-the-court-of-the-crimson-king-vinyl-SD-8245/184388484431?hash=item2aee68fd4f:g:XA0AAOSwya1fKLv1

62. Once the auction ends, the object is transformed, as shown below, where the displayed image is smaller and has a “sold” banner overlaid on top of the image.

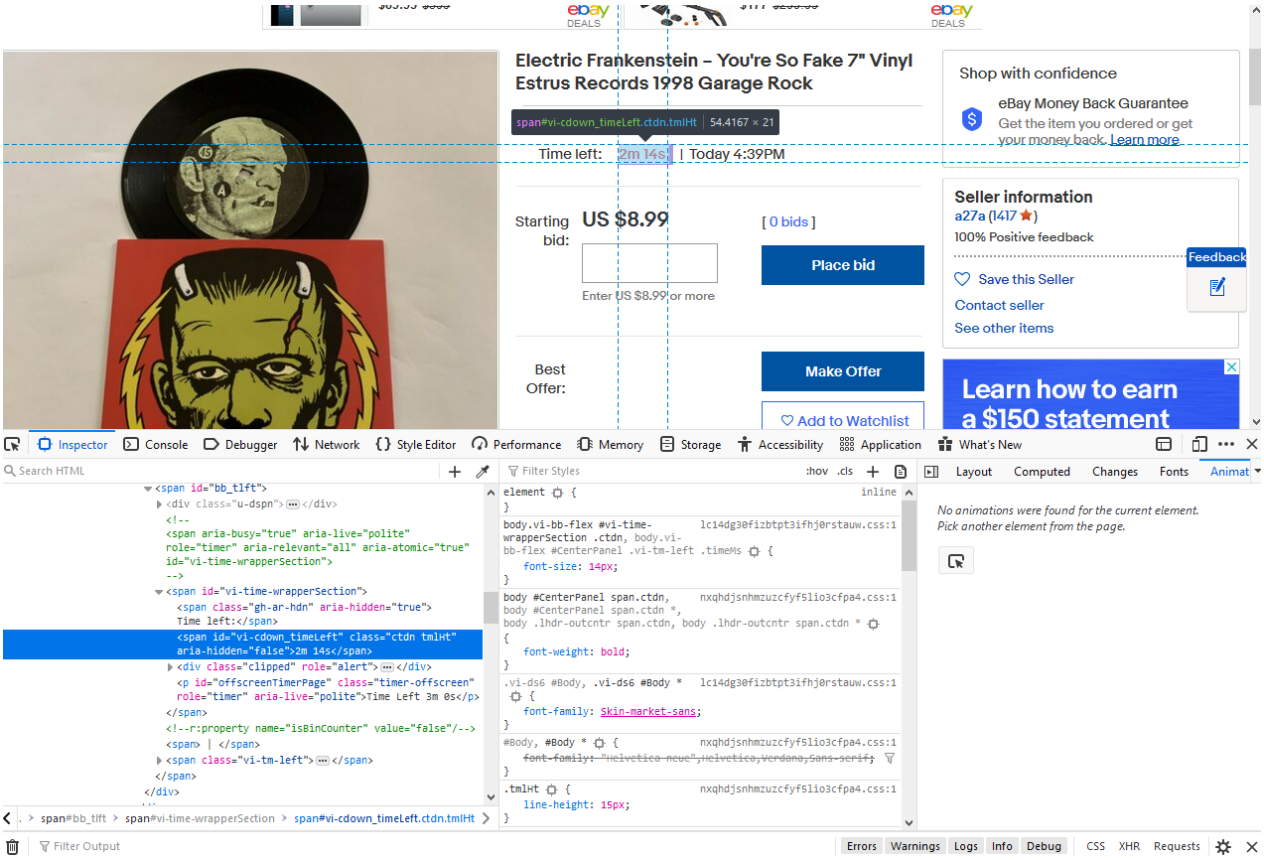


Source: https://www.ebay.com/itm/king-crimson-in-the-court-of-the-crimson-king-vinyl-SD-8245/184388484431?hash=item2aee68fd4f:g:XA0AAOSwya1fKLv1&autorefresh=true

63. In the ended auction page, this new auction object still contains a link to the original image.

Source: https://www.ebay.com/itm/king-crimson-in-the-court-of-the-crimson-king-vinyl-SD-8245/184388484431?hash=item2aee68fd4f:g:XA0AAOSwya1fKLv1&autorefresh=true

64. The timer style in the original auction page can be seen in the HTML source.



Source: https://www.ebay.com/itm/Electric-Frankenstein-Youre-So-Fake-7-Vinyl-Estrus-Records-1998-Garage-Rock/184389998951?hash=item2aee801967:g:HnoAAOSwwQ5e3RXO

65. Additionally, the time left in an item's auction can be found in eBay's databases, as evidenced from the API calls such as a "WatchedItemEndingSoon Notification," which will send a notification to a user watching an item based on the time left in an auction.

WatchedItemEndingSoon Notification

A **WatchedItemEndingSoon** notification is sent to a subscribed buyer or application when the listing of the watched item is about to end. This notification has a TimeLeft property that allows the buyer to specify when the notification is sent based on how much time is left before the listing ends.

Platform Choice

When a user requests, via the notification preferences web page, to be notified of this event, the default is for the notification to be sent via API ("Platform"). The user can choose instead to be notified via wireless ("SMS").

Additional Steps for WatchedItemEndingSoon Subscription

On the eBay web site notifications preferences page, a user can request to be notified about items ending soon and can set the amount of time prior to the end of the listing. A user can also subscribe via API.

In addition to the typical steps for setting notification preferences, there are a few more steps for subscribing a user for the **WatchedItemEndingSoon** notification:

1. Set **EventProperty.EventType** to `WatchedItemEndingSoon`.
2. Set **EventProperty.Name** to `TimeLeft`.
3. Set **EventProperty.Value** to the number of minutes before the end of the listing that the user is to be notified.

Data Fields Returned

The data fields the **WatchedItemEndingSoon** notification returns are essentially the same as those returned by **GetItem**. The **ItemArray** container will contain at most one **Item** container. If there is no item matching the submitted **ItemID**, no **ItemArray** container will be returned. If the listing ended, **TimeLeft** will be `PT0S`.

Source: https://developer.ebay.com/devzone/guides/features-guide/content/Notifications/Notif-WatchedItemEndingSoon.html

66. Each web page is defined entirely by each of the plurality of objects comprising that web page and the style associated with the object. Using the Document Object Model, modern browsers parse the HTML code that comprises web pages into objects.

> The Document Object Model (DOM) connects web pages to scripts or programming languages by representing the structure of a document—such as the HTML representing a web page—in memory. Usually, that means JavaScript, although modeling HTML, SVG, or XML documents as objects are not part of the core JavaScript language, as such.
>
> The DOM represents a document with a logical tree. Each branch of the tree ends in a node, and each node contains objects. DOM methods allow programmatic access to the tree. With them, you can change the document's structure, style, or content.

https://developer.mozilla.org/en-US/docs/Web/API/Document_Object_Model

The HTML DOM is a standard **object** model and **programming interface** for HTML. It defines:

- The HTML elements as objects
- The properties of all HTML elements
- The methods to access all HTML elements
- The **events** for all HTML elements

In other words: The HTML DOM is a standard for how to get, change, add, or delete HTML elements.
https://www.w3schools.com/js/js_htmldom.asp

67. The build engine is configured to produce a database with a multidimensional array comprising the objects that comprise the web site including data defining, for each object, the object style, an object number, and an indication of the web page that each object is part of. For example, the objects in eBay auctions represent products that are sold by sellers on eBay. eBay offers an API which connects to its database where the objects related to those products are stored. As described below, each object has an object style, number, and indication of the web page that it is a part of.

Primary Catalog API objects

Objects are as follows:

Product Summary

The **ProductSummary** object contains basic information about a product, including the product's title, aspects and their values, associated images, and any recognized identifiers that apply to the product. It also includes a URL to its eBay Product page.

Refinement

The **Refinement** object contains the *aspects* (properties) of a specified eBay category, along with the values that have been used for each aspect, and a count of the number of times that each value has been used in previous eBay listings. This information is used to help sellers choose the most appropriate search criteria for the product.

Product

The **Product** object contains detailed information about a product, including the product's title and description, aspects and their values, associated images, applicable category IDs, and any recognized identifiers that apply to the product.

Product Aspect

The **ProductAspect** object contains information about a type of product attribute (an *aspect*) that varies according to a product's brand and category. For example, an aspect called **Sleeve Length** may apply to shirts, but not to cameras. Every combination of product brand and category can have a unique combination of aspects.

Source: https://developer.ebay.com/api-docs/commerce/catalog/static/overview.html

68. The objects within the database include an eBay product identifier, which is an object number. The database also includes an indication of the web page that each object is a part of through at least the product identifier.

product

Method Name	HTTP Method	Path	Summary	Samples
getProduct	GET	/product/{epid}	Retrieve the details of a specific catalog product using the product's eBay Product Identifier (ePID).	View

product_summary

Method Name	HTTP Method	Path	Summary	Samples
search	GET	/product_summary /search	Find and identify catalog products that match the provided search criteria.	View

Source: https://developer.ebay.com/api-docs/commerce/catalog/resources/methods

Further information on the eBay getProduct API is available at https://developer.ebay.com/api-docs/commerce/catalog/resources/product/methods/getProduct

69. The URL of eBay items is also visible through the eBay trading API, such as by using the "GetContextualKeywords" call.

Argument	Type	Occurrence	Meaning
Call-specific Input Fields [Jump to standard fields]			
CategoryID	string	Optional, repeatable: [0..*]	The ID of the category to which keywords are to be limited. Zero or more category IDs can be specified.
Encoding	string	Required	Web page encoding by which the URL is to be handled, such as ISO-8859-1.
URL	anyURI	Required	The URL of the web page from which eBay is to extract keywords.

Source: https://developer.ebay.com/DevZone/xml/docs/Reference/eBay/GetContextualKeywords.html

70. Additional databases are provided for all aspects of eBay's website, such as Oracle and MySQL databases.

What is the backend software stack of Ebay?

Saurabh Mehta · Updated August 30, 2014
Works at eBay (product)

It varies team by team and use case by use case but to give you breadth of technologies that we work on

Programming languages:

- Java,
- C/C++
- Scala
- Python
- Perl
- Objective C

Databses: traditional and Nosql bases

- Oracle
- MySQL
- Cassandra
- Hbase
- Mongo
- Couch DB

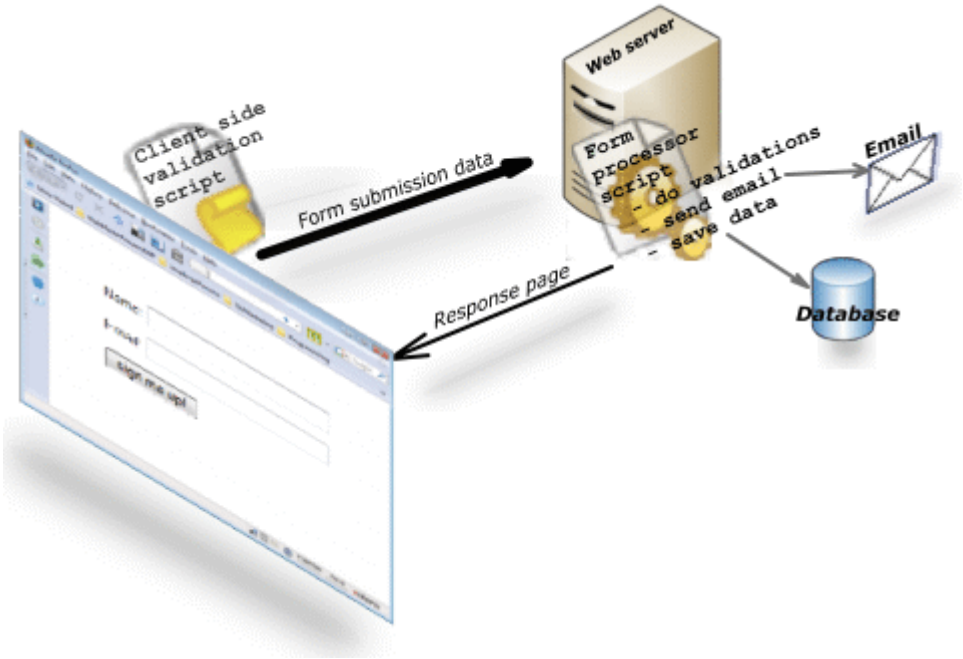
Source: https://www.quora.com/What-is-the-backend-software-stack-of-Ebay/answer/Saurabh-Mehta

71. The build engine in the Accused Instrumentality is further configured to provide the database to a server accessible to a web browser. As described above, the eBay API connects to a database, and that database is provided to a server accessible to a web browser because eBay product listings are stored on a database and displayed on a web browser.

72. The database produced by the Accused Instrumentality's build engine enables a web browser with access to a runtime engine to generate the web-site from the objects and style data extracted from the provided database.

73. Because at least some of the Accused Instrumentality runtime files include several Asynchronous JavaScript And XML ("AJAX") commands designed for pulling data from a database to display a web page, the server-side script that process this form would send a request for data to an eBay database server from which it could be retrieved. The following

diagram is from a published web tutorial explaining the typical process (using an email "form" as the example):



Source: http://www.javascript-coder.com/html-form/html-form-tutorial-p1.phtml

74. Modern web browsers all include a runtime engine for generating web-sites. Modern web browsers rely on browser engines, to interpret and execute JavaScript and HTML to render web pages on a computer. Internet Explorer has relied on Trident (code name for MSHTML) (which has included the Chakra JavaScript Engine, see http://en.wikipedia.org/wiki/MSHTML); Edge relies on EdgeHTML (which also includes the Chakra JavaScript Engine, see https://docs.microsoft.com/en-us/microsoft-edge/dev-guide) Safari and Chrome rely on Webkit (which includes WebCore and JavaScript Core, see http://en.wikipedia.org/wiki/WebKit); Firefox relies on Gecko (which includes Spidermonkey, see http://www.mozilla.org/projects/technologies.html). As shown above, the browser constructs the website according to the Document Object Model. Using the Document Object Model, modern browsers parse the HTML code that comprises web pages into objects.

> The Document Object Model (DOM) connects web pages to scripts or programming languages by representing the structure of a document—such as the HTML representing a web page—in memory. Usually, that means JavaScript, although modeling HTML, SVG, or XML documents as objects are not part of the core JavaScript language, as such.
>
> The DOM represents a document with a logical tree. Each branch of the tree ends in a node, and each node contains objects. DOM methods allow programmatic access to the tree. With them, you can change the document's structure, style, or content.

https://developer.mozilla.org/en-US/docs/Web/API/Document_Object_Model

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- The **events** for all HTML elements

In other words: The HTML DOM is a standard for how to get, change, add, or delete HTML elements.

https://www.w3schools.com/js/js_htmldom.asp

75. On information and belief, eBay was aware of the ’168 patent and its infringement thereof at least as early as when eBay was made aware of its infringement of the ’397 patent. The ’397 patent and the ’168 patent are related patents and, on information and belief, eBay became aware of the other family members of the ’397 patent it infringed around the time eBay was provided notice of its infringement of the ’397 patent by virtue of its investigation into its own infringement. eBay also was made aware of the ’168 patent and its infringement thereof at least as early as August 31, 2020 when Express Mobile provided notice of eBay’s infringement of the ’168 patent to Ms. Marie Oh Huber, SVP and General Counsel of eBay. Upon information and belief, since at least the time eBay received notice, eBay has directly infringed at least claim 1 of the ’168 patent and induced others to infringe at least claim 1 of the ’168 patent under 35 U.S.C. § 271(b) by, among other things, and with specific intent or willful blindness, actively aiding and abetting others to infringe, including but not limited to

eBay's clients, customers, and end users, whose use of the Accused Instrumentality constituted direct infringement of at least one claim of the '168 patent. In particular, eBay's actions that aid and abet others such as customers and end users to infringe included advertising and distributing the Accused Instrumentality and providing instruction materials, training, and services regarding the Accused Instrumentalities. *See e.g.*, https://www.ebay.com/help/home, https://developer.ebay.com, https://pages.ebay.com/seller-center/, https://export.ebay.com/en/start-sell/first-steps/how-create-listing/how-create-listing/, https://www.ebay.com/help/listings/creating-managing-listings/creating-listing?id=4105, and related domains and subdomains. Upon information and belief, eBay has engaged in such actions with specific intent to cause infringement or with willful blindness to the resulting infringement because eBay has had actual knowledge of the '168 patent and knowledge that its acts were inducing infringement of the '168 patent since at least the date eBay received notice that such activities infringed the '168 patent.

76. eBay is liable as a contributory infringer of the '168 patent under 35 U.S.C. § 271(c) by offering to sell, selling and importing into the United States website or web page authoring tools to be especially made or adapted for use in an infringement of the '168 patent. The Accused Instrumentality is a material component for use in practicing the '168 patent, is specifically made and is not a staple article of commerce suitable for substantial non-infringing use.

77. Upon information and belief, since the date of its receipt of notice, eBay's infringement of the '168 patent has been willful and intentional under the standard announced in *Halo Elecs., Inc. v. Pulse Elecs., Inc.*, 136 S.Ct. 1923, 195 L.Ed 2d 278 (2016). Since at least August 31, 2020, eBay has willfully infringed the '168 patent by refusing to take a license and continuing to make, use, test, sell, license, and/or offer for sale/license the Accused

Instrumentalities. eBay has been aware that it infringes the ’168 patent since at least August 31, 2020, and instead of taking a license, eBay has opted to make the business decision to “efficiently infringe” the ’168 patent. In doing so, eBay willfully infringed the ’168 Patent.

78. eBay’s infringement has damaged and injured and continues to damage and injure Express Mobile.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that the Court enter judgment for Plaintiff and against Defendant as follows:

1. That U.S. Patent No. 6,546,397 be judged valid, enforceable, and infringed by Defendant;

2. That U.S. Patent No. 7,594,168 be judged valid, enforceable, and infringed by Defendant;

3. That Plaintiff be awarded judgment against Defendant for damages together with interest and costs fixed by the Court including an accounting of all infringements and/or damages not presented at trial;

4. That the Court declare this an exceptional case and award Plaintiff its attorneys’ fees, as provided by 35 U.S.C. § 285 and that Plaintiff be awarded enhanced damages up to treble damages for willful infringement as provided by 35 U.S.C. § 284; and

5. That Plaintiff be awarded such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff respectfully requests a jury trial on all issues so triable.

Dated: September 1, 2020

Respectfully submitted,

/s/ *Robert F. Kramer w/permission Robert Christopher Bunt*

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