UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VERIPATH, INC., a Delaware Corporation,
 	
      Plaintiff,
 	
  v.
 	
FAKTOR B.V., a foreign entity,
 	
      Defendant.
	Civil Action No. _____
	
	COMPLAINT FOR PATENT INFRINGEMENT
	
	DEMAND FOR JURY TRIAL

Plaintiff VeriPath, Inc. ("Plaintiff" or "VeriPath) alleges as follows:

NATURE OF ACTION

1. This is an action under the patent laws of the United States, 35 U.S.C. § 1, *et seq.*, for infringement by Defendant Faktor B.V. ("Defendant" or "Faktor") of patents owned by Hall et al.

THE PARTIES

2. Plaintiff VeriPath, Inc. ("Plaintiff") is a corporation organized under the laws of Delaware and registered to do business in the state of New York, with its principal place of business at 665 S. Bayview Ave, Freeport, NY, 11520.

3. Upon information and belief, Defendant Faktor is a private limited liability company ("Besloten Vennootschap" or "B.V.") organized under the laws of the Netherlands.

JURISDICTION AND VENUE

4. This action arises under the patent laws of the United States, Title 35 of the United States Code. Accordingly, this Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5.   On information and belief, Defendant conducts business in the United States. *See* Ex. B.

6.   Defendant offered to sell its product to VeriPath on January 14, 2019 in New York. *See* Ex. F.

7.   Defendant's website is in the English language. *See* Ex. C.
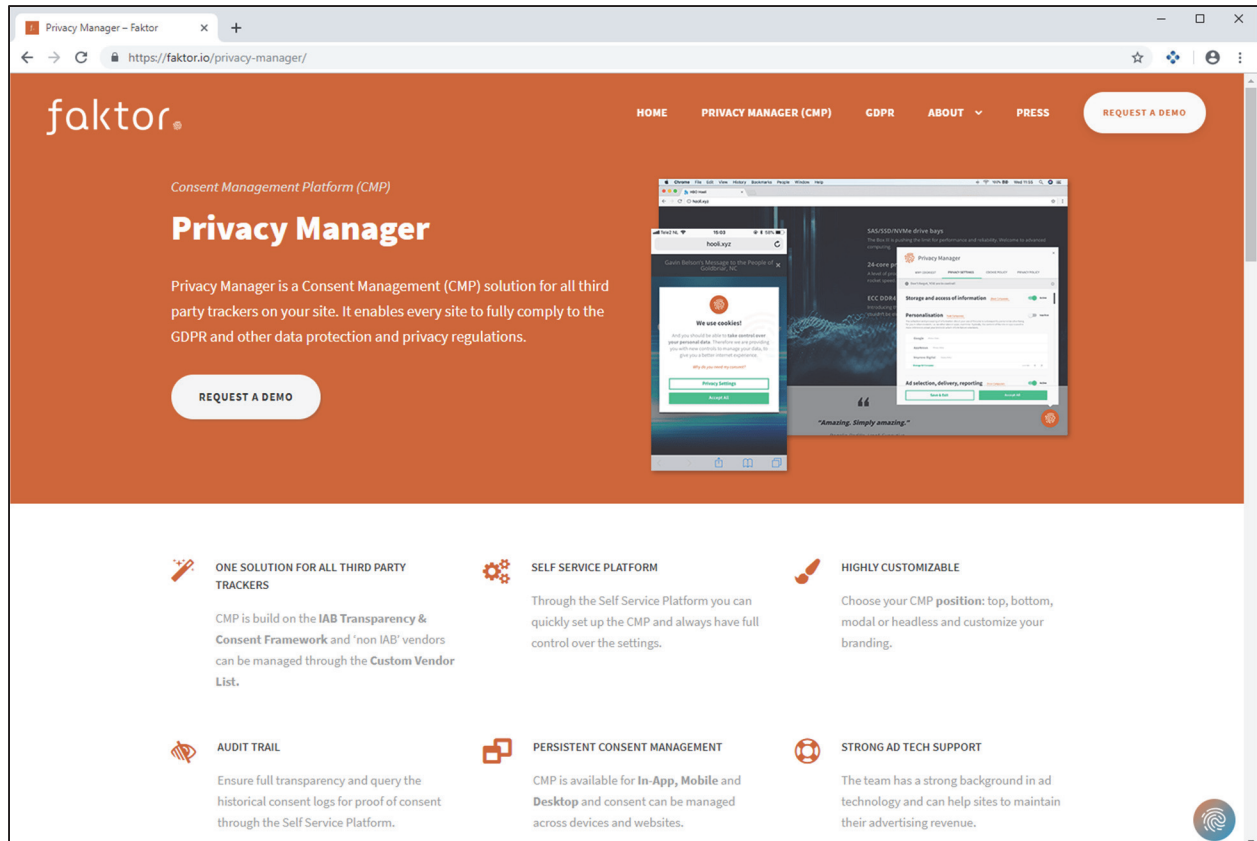
8.   Defendant offers its products for sale in the United States on its English language-webpage. *See* Ex. D.

9.   Defendant uses services located in the United States to host its website and to store data. *See* Ex. E.

10.   Defendant conducts substantial business in the state of New York, including (1) committing at least a portion of the infringing acts alleged herein and (2) regularly transacting business, soliciting business, and deriving revenue from the sale of services, including infringing services, to entities in the state of New York. *See* Ex. F (offers for sale and to schedule a demo on website, in English language). Thus, Defendant has purposefully availed itself of the benefits

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of the state of New York, and the exercise of jurisdiction over Defendant would not offend

traditional notions of fair play and substantial justice.

11.   On information and belief, Defendant transacts business in the state of New York

by selling its products or running demonstrations of its software. These claims arise from

Defendant's sales or demonstration of its Privacy Manager product as explained below.

12.   Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400.

THE '451 PATENT

13.   VeriPath is the world's largest consumer data marketplace. VeriPath manages and

creates revenue for hundreds of applications by providing privacy-compliant data to buyers.

14.   VeriPath is the owner by assignment of United States Patent No. 10,075,451 ("the

'451 patent"), including the right to sue for past damages. Ex. I.

15.   The '451 patent was duly and legally issued by the United States Patent and

Trademark Office on September 11, 2018, is active, and is entitled "Methods and Systems for

User Opt-In to Data Privacy Agreements." A true and correct copy of the '451 patent is attached

hereto as Exhibit A.

16.   Defendant has been aware of the '451 patent since at least February 6, 2019. Ex.

H.

17.   Defendant directly infringes, literally or under the doctrine of equivalents, one or

more claims of the '451 patent by, without authority, making, using, importing, selling, or

offering to sell its Privacy Manager, Consent Management Platform (CMP) within the United

States, in violation of 35 U.S.C. § 271(a).

18.   In addition to directly infringing the '451 patent pursuant to 35 U.S.C. § 271(a),

either literally or under the doctrine of equivalents, or both, Defendant indirectly infringes the

'451 patent by instructing, directing, and/or requiring others, including its customers, purchasers, users, and developers, to perform all or some of the steps of the method claims, either literally or under the doctrine of equivalents, or both, of the '451 patent, pursuant to 35 U.S.C. § 271(b) & (c).

COUNT I
(Willful Infringement of United States Patent No. 10,075,451 by Defendant)

19. VeriPath realleges and incorporates herein by reference the allegations set forth in the foregoing paragraphs.

20. The '451 patent is presumed to be valid under 35 U.S.C. § 282.

21. Defendant directly or indirectly infringes or induces infringement by its customers, literally or under the doctrine of equivalents, one or more claims of the '451 patent in violation of 35 U.S.C. § 271.

22. Claim 1 of the '451 patent recites, as follows:

> 1. A method for controlling access to a user's personal information comprising:
> providing a software component for inclusion in an application, the software component having an application programming interface (API);
> obtaining, from the application executing on a device of a user of the application, personal information about the user of the application, the personal information obtained via the API by the software component executing on the device;
> identifying the type of the obtained personal information;
> determining, based on at least the type of obtained personal information, a required permission from the user for at least one proposed use of the obtained personal information;
> presenting, to the user, a first offer to provide access to at least one enhanced function of the application in exchange for the required permission; and
> responsive to the user providing the required permission, providing the user with access to the at least one enhanced function of the application.

23. Defendant infringes each element of claim 1 of the '451 patent.

24.   Defendant's Privacy Manager product ("Privacy Manager") enables web sites to comply with GDPR and other data protection and privacy regulations.

25.   Privacy Manager provides consent management functionality in a method for controlling access to a user's personal information.
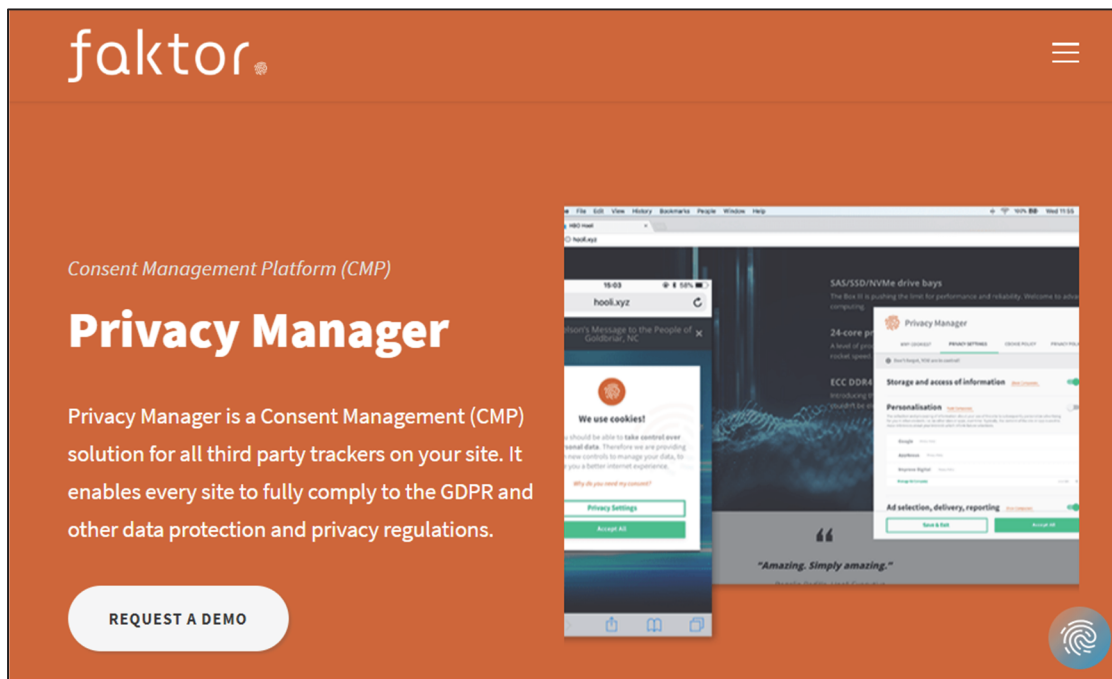
26.   Defendant provides a software component for inclusion in an application, the software component having an application programming interface (API).

27.   On its website, Defendant notes that it provides a "Self Service Platform" that enables a customer to activate the CMP. As part of that process, the customer can "copy the code for your site or tag manager."
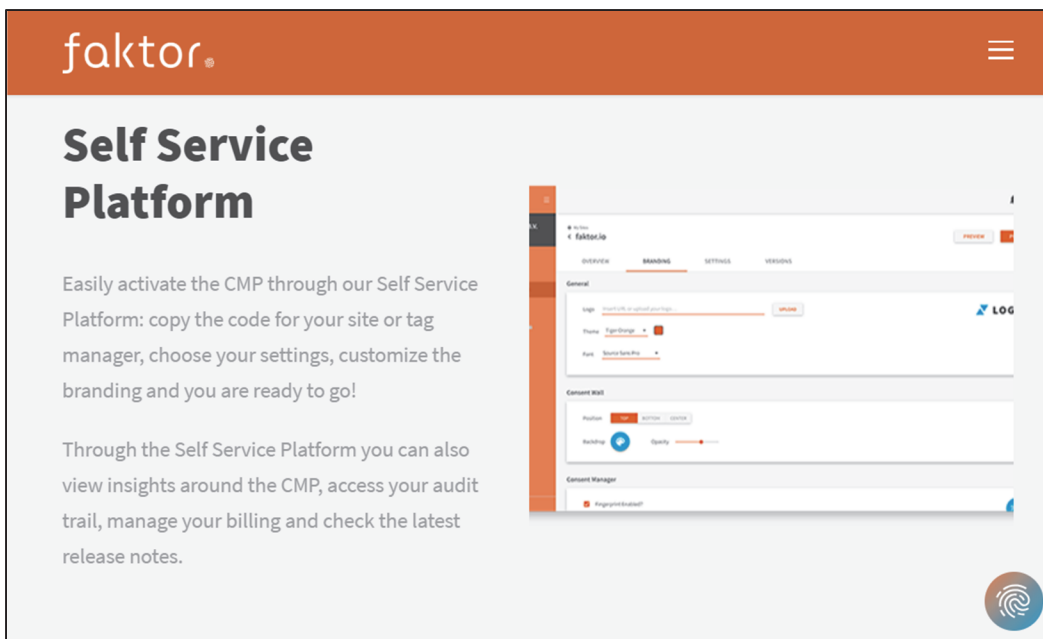
28.   Defendant provides a software component, for inclusion in its customer's applications, having an API.

29.   Defendant's own U.S. website's Privacy Manager home page ("home page") includes a software component having an API.

30.   The publicly-available HTML source for Defendant's home page includes a reference to https://config-prod.choice.faktor.io/73ccd340-ebfd-4ded-b818-b48b970eb6eb/faktor.js. ("faktor.js"). *See* Ex. G.

31.   When the Defendant's home page is loaded, the function "cmp.onload" is executed. *See* Ex. G.

```
18   cmp.onload = function () {
19       window.__cmp.start({"localization":{"en":{"introTitle":"We
```

32.   Faktor.js is a software component having an API.

33.   Defendant's customers utilize this software component on their websites as is illustrated in Defendant's Privacy Manager "One Sheet." Ex. D.

The Privacy Manager helps every site owner to

- *Ensure GDPR compliance* for marketing and advertising;
- *Empower their users* with the ability to change their privacy preferences at any time via the Faktor fingerprint;
- Ensure personalized ads are loaded after consent status has been communicated to all relevant vendors;
- *Show every website visitor their consent history through Faktor's audit trail;*
- *Get insights*, keep track and control over the CMP via the Faktor platform.

34. Defendant's Privacy Manager obtains or facilitates obtaining, from the application executing on a device of a user of the application, personal information about the user of the application, the personal information obtained via the API by the software component executing on the device.

35.   Defendant's home page states "Consent is one of the six legal bases for processing of personal data under the GDPR. It is needed for many cases in the marketing and advertising industry, as **personal data now includes cookies** and other device and online identifiers (IP addresses, IDFA, AAID, etc.)."
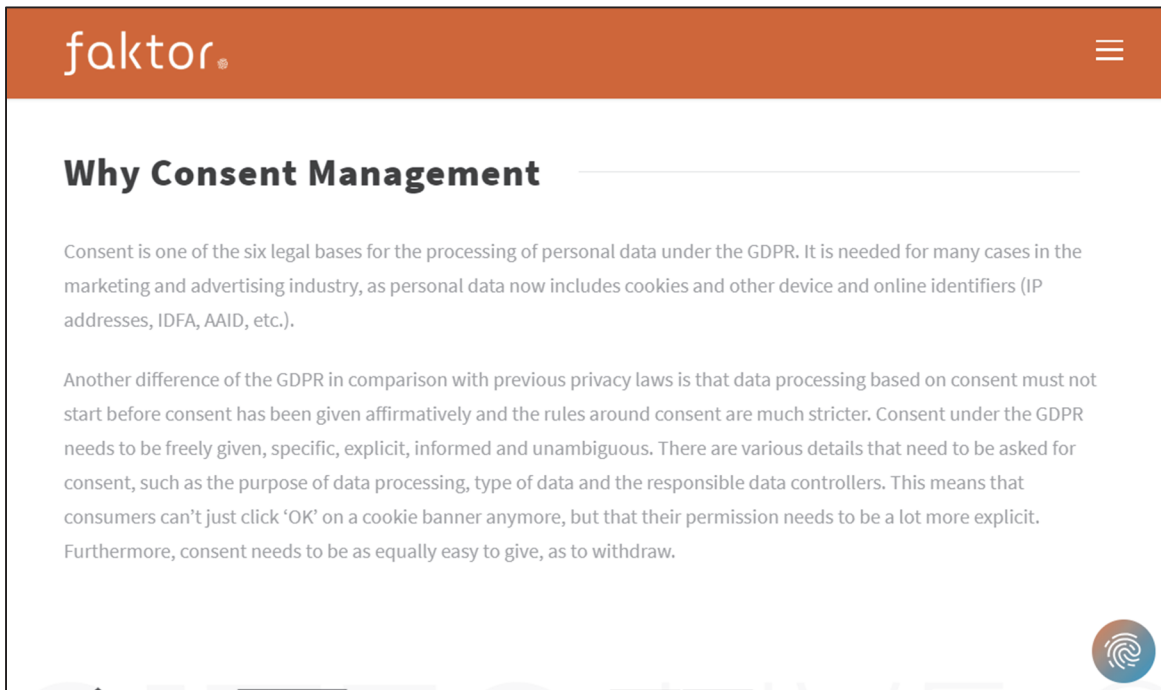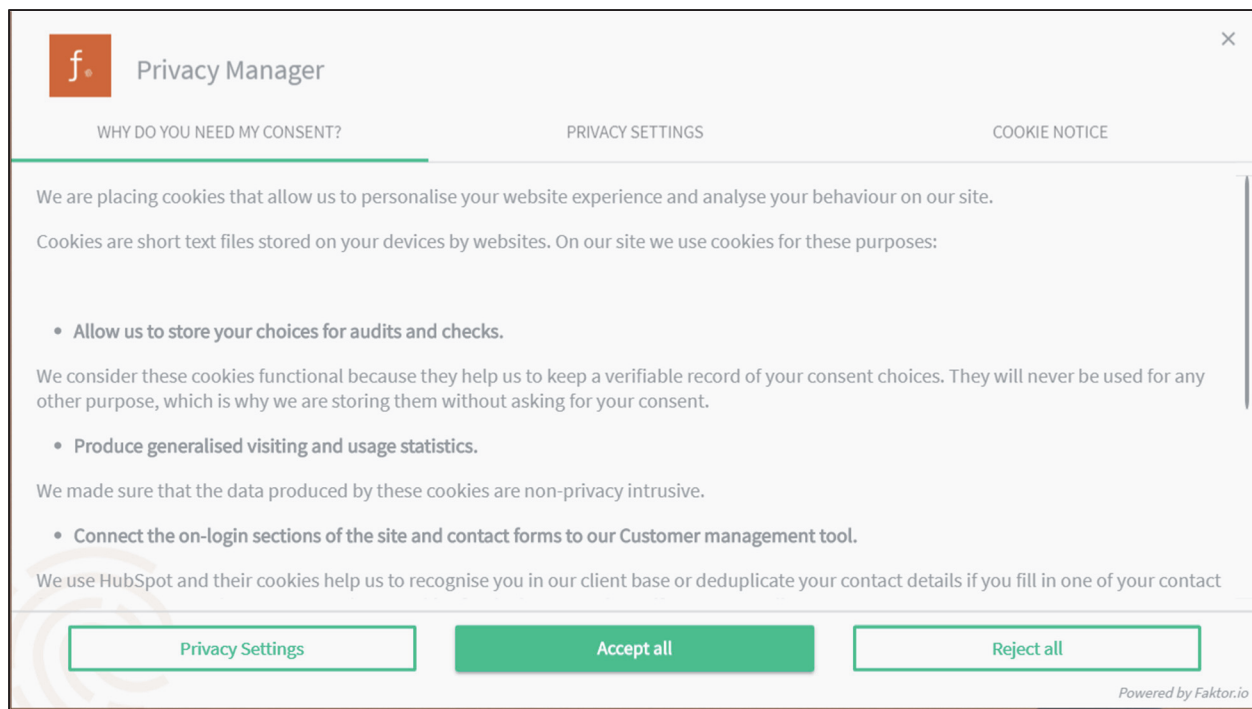

36.   Defendant's own home page uses and collects cookies containing personal data as part of the method for controlling access to Defendant's web site. *See* Ex. G.
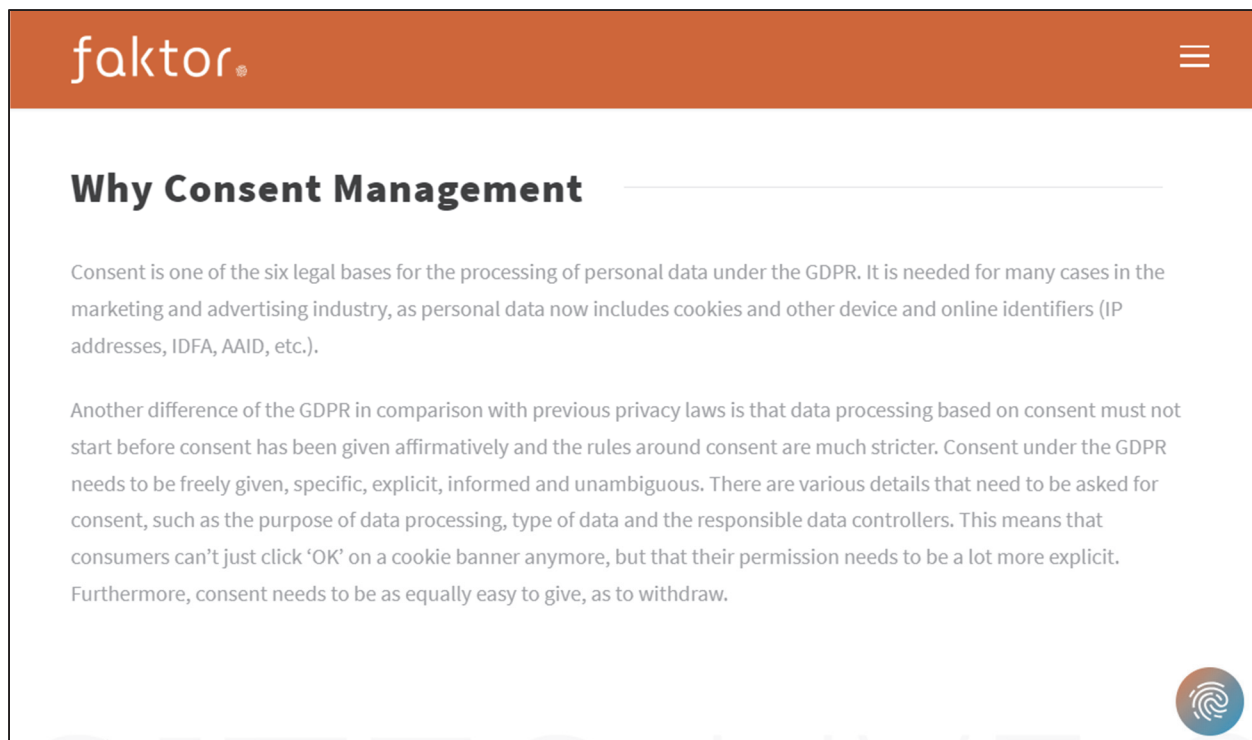
37.   Defendant's Privacy Manager identifies or facilitates identifying the type of the

obtained personal information.

38.   Defendant's home page notes, "There are various details that need to be asked for

consent, such as the purpose of data processing, **type of data** and the responsible data

controllers."

39.   Defendant's own home page identifies the type of obtained personal information.

For example, Defendant's own home page determines whether certain "functional cookies" are

present on a user's computer. Ex. G, at 8:35-37.

```
32   NOTICE","titleMobile":"COOKIE","content":"<p>We use a combination
33   of cookies on our website and here you can find more information
34   about those cookies and how to control them.</p><p><strong>
35   Functional cookies</strong></p><p>Functional cookies allow us to
36   remember your preferences so that we can reproduce your choices
37   when you come back to our site. Our functional cookies do not
38   store any information that tracks your activity, however we are
39   placing a randomly assigned ID in your browser in order to be
40   able to remember your cookie preferences.</p><p>It is not
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40.   Defendant's Privacy Manager determines or facilitates determining, based on at

least the type of obtained personal information, a required permission from the user for at least

one proposed use of the obtained personal information.

41.   Defendant's home page notes, "There are various details that need to be asked for

consent, such as the *purpose of data processing*, **type of data** and the responsible data

controllers."
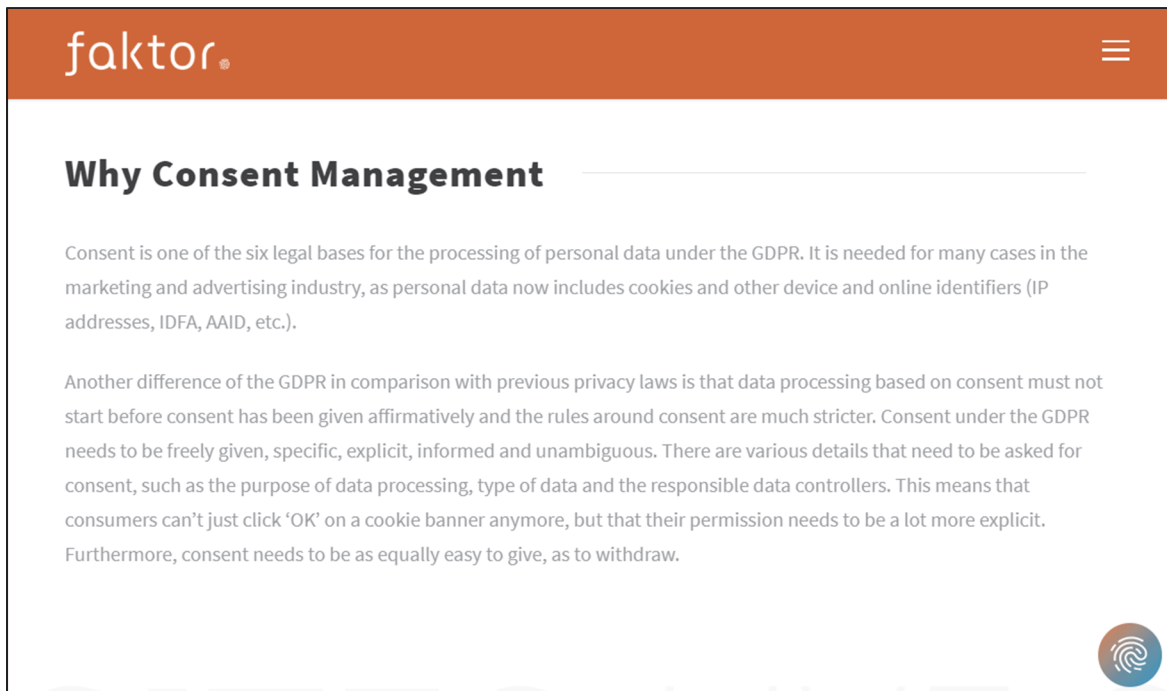
42.   Defendant's Privacy manager determines a required permission for a proposed

use, i.e., the purpose of data processing, based on the type of obtained personal information.

43.   Defendant's own home page "might not work properly" if the user does not allow

Defendant's Privacy Manager to examine the user's functional cookies. Ex. G, at 8:40-9:1.

44.   Defendant's Privacy Manager presents or facilitates presenting, to the user, a first

offer to provide access to at least one enhanced function of the application in exchange for the

required permission.
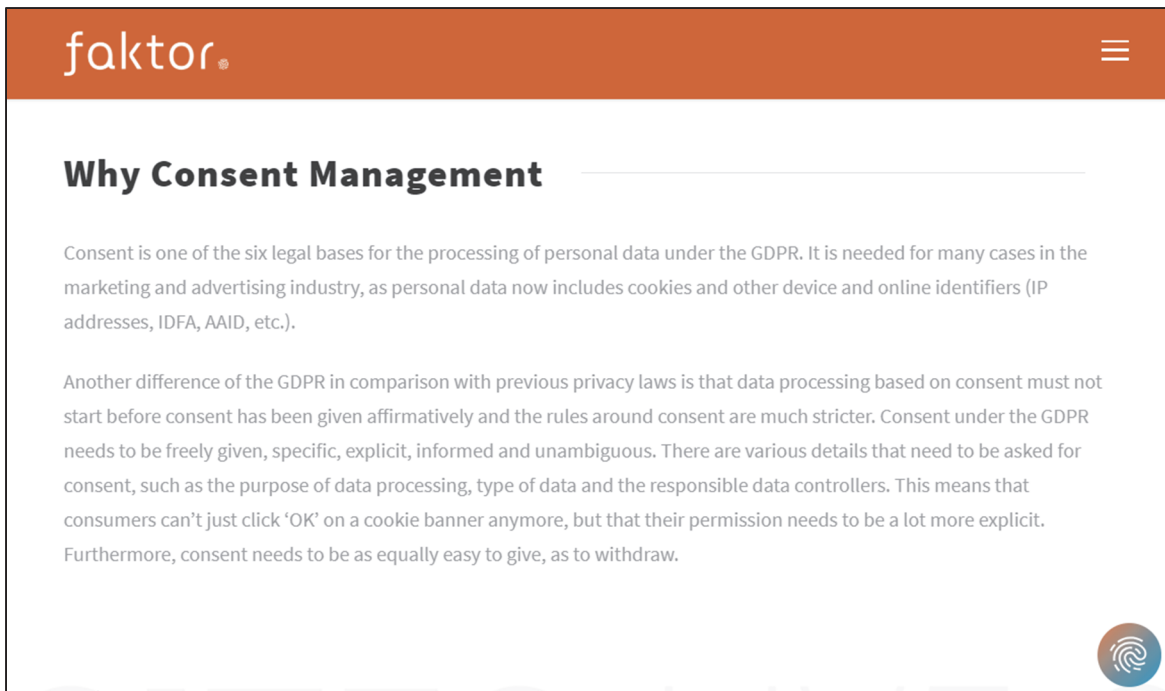
45.   Defendant's home page notes, "data processing based on consent must not start before consent has been given affirmatively and the rules around consent are much stricter" Ex. C.

46.   Defendant's Privacy Manager products also, responsive to the user providing the required permission, provides or facilitates providing the user with access to the at least one enhanced function of the application.

47.   Defendant's own home page requires consenting to the cookies before providing access to the various web pages on Defendant's web site and thus presents, to the user, a first offer to provide access to at least one enhanced function of the application in exchange for the required permission. Ex. G, at 8:40-9:1.

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40    able to remember your cookie preferences.</p><p>It is not
41    possible to reject these cookies on our site, but you can adjust
42    settings of your browser to disable or remove them. In this case
43    our site might not work properly, for example, we will keep
44    showing you the Privacy Manager tool even if you have previously
1     accepted all cookies.</p><p><br></p><p><strong>Here is a list of
2     our functional cookies:</strong></p><p><br></p><ul><li>
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48.   As explained in the foregoing paragraphs, Defendant's Privacy Manager infringes at least claim 1 of the '451 patent.

49.   Defendant's infringement of the '451 patent has been willful since at least February 6, 2019.

50.   VeriPath has been and continues to be injured by Defendant's infringement of the '451 patent. VeriPath is entitled to recover damages adequate to compensate it for Defendant's infringing activities in an amount to be determined at trial but in no event less than a reasonable royalty.

51.   Unless enjoined by this Court, Defendant's acts of infringement will continue to damage VeriPath irreparably.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court:

a.   Enter a judgment that Defendant has infringed one or more claims of the '451 patent;

b.   Grant a permanent injunction restraining and enjoining Defendant and its officers, directors, agents, servants, employees, successors, assigns, parents, subsidiaries, affiliated or related companies, and attorneys from directly or indirectly infringing one or more claims of the patent-in-suit;

c.   Award Plaintiff damages in an amount sufficient to compensate VeriPath for

Defendant's infringement of the '451 patent, but not less than a reasonable royalty, together with

interests and costs;

d.   Award Plaintiff treble damages for Defendant's willful infringement;

e.   Award prejudgment interest to VeriPath under 35 U.S.C. § 284;

f.   Grant such other and further relief as this Court may deem just and proper.

JURY TRIAL DEMAND

VeriPath respectfully demands a trial by jury on all claims and issues so triable.

Dated: February 15, 2019

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Frederick L. Whitmer

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