HON. MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

INTERVAL LICENSING LLC, Plaintiff, v. AOL, INC.; APPLE, INC.; eBAY, INC.; FACEBOOK, INC.; GOOGLE INC.; NETFLIX, INC.; OFFICE DEPOT, INC.; OFFICEMAX INC.; STAPLES, INC.; YAHOO! INC.; AND YOUTUBE, LLC, Defendants.	Case No. 2:10-cv-01385-MJP **EBAY INC.'S ANSWER TO FIRST AMENDED COMPLAINT, AFFIRMATIVE DEFENSES AND COUNTERCLAIMS** **JURY DEMAND**

Defendant eBay Inc. ("eBay") answers the First Amended Complaint for Patent Infringement ("First Amended Complaint") filed in this action by Plaintiff Interval Licensing LLC ("Interval" or "Plaintiff") as follows:

1. eBay is without information or knowledge sufficient to admit or deny the allegations of paragraph 1 of the First Amended Complaint, and on that basis denies such allegations.

2-3. The allegations in paragraphs 2-3 are not asserted against eBay and therefore no answer is required.

4. Admitted.

KLARQUIST SPARKMAN, LLP
121 SW Salmon Street, Suite 1600
Portland, OR 97204
Tel: (503) 595-5300; Fax: (503) 595-5301

5-12. The allegations in paragraphs 5-12 are not asserted against eBay and therefore no answer is required.

13. eBay admits that this action purports to state a claim under the United States patent laws and that such a claim, if proper, made by a party with sufficient standing, would arise within the Court's subject matter jurisdiction. For purposes of this action only, eBay admits that venue is proper in the United States District Court for the Western District of Washington. eBay denies all further allegations directed against it in paragraph 13 of the First Amended Complaint. No answer is required in response to the allegations not asserted against eBay.

14. eBay admits that Paul Allen and Bill Gates co-founded Microsoft Corporation in 1975. eBay is without information or knowledge sufficient to admit or deny the remaining allegations of paragraph 14 of the First Amended Complaint, and on that basis denies such allegations.

15. eBay denies that Interval Research was ever one of the preeminent technology firms. eBay is without information or knowledge sufficient to admit or deny the remaining allegations of paragraph 15 of the First Amended Complaint, and on that basis denies such allegations.

16. eBay is without information or knowledge sufficient to admit or deny the allegations of paragraph 16 of the First Amended Complaint, and on that basis denies such allegations.

17. eBay is without information or knowledge sufficient to admit or deny the allegations of paragraph 17 of the First Amended Complaint, and on that basis denies such allegations.

18. eBay is without information or knowledge sufficient to admit or deny the allegations of paragraph 18 of the First Amended Complaint, and on that basis denies such allegations.

KLARQUIST SPARKMAN, LLP
121 SW Salmon Street, Suite 1600
Portland, OR 97204
Tel: (503) 595-5300; Fax: (503) 595-5301

19. eBay is without information or knowledge sufficient to admit or deny the allegations of paragraph 19 of the First Amended Complaint, and on that basis denies such allegations.

20. eBay admits that Exhibit 2 to the First Amended Complaint, on its face, purports to be a copy of U.S. Patent No. 6,263,507 B1 ("'507 patent"), issued on July 17, 2001, which is entitled "Browser for Use in Navigating a Body of Information, With Particular Application to Browsing Information Represented By Audiovisual Data." eBay denies that the '507 patent was "duly and legally issued for an invention." eBay is without information or knowledge sufficient to admit or deny the remaining allegations set forth in paragraph 20 of the First Amended Complaint, and on that basis denies such allegations.

21-23. The allegations in paragraphs 21-23 are not asserted against eBay and therefore no answer is required.

24. eBay admits that it operates the eBay.com and Half.com websites, which provide product listings and advertisements to certain website visitors. eBay denies the remaining allegations of paragraph 24.

25-37. The allegations in paragraphs 25-37 are not asserted against eBay and therefore no answer is required.

38. eBay denies the allegations asserted against it. The remaining allegations in paragraph 38 are not asserted against eBay and therefore no answer is required.

39-58. The allegations in paragraphs 39-58 are not asserted against eBay and therefore no answer is required.

59. eBay admits that Exhibit 5 to the First Amended Complaint, on its face, purports to be a copy of U.S. Patent No. 6,757,682 B1 ("the '682 patent"), issued June 29, 2004, which is entitled "Alerting Users to Items of Current Interest." eBay denies that the '682 patent was "duly and legally issued for an invention." eBay is without information or knowledge sufficient to admit or deny the remaining allegations set forth in paragraph

KLARQUIST SPARKMAN, LLP
121 SW Salmon Street, Suite 1600
Portland, OR 97204
Tel: (503) 595-5300; Fax: (503) 595-5301

60-62. The allegations in paragraphs 60-62 are not asserted against eBay and therefore no answer is required.

63. eBay admits that it operates the eBay.com and Half.com websites, and that those websites provide product recommendations to certain website visitors. eBay admits that information regarding certain activities of eBay.com website visitors can be used in determining recommendations to provide to certain website visitors. eBay denies the remaining allegations of paragraph 63.

64-73. The allegations in paragraphs 64-73 are not asserted against eBay and therefore no answer is required.

74. eBay denies the allegations directed at it. The remaining allegations in paragraph 74 are not asserted against eBay and therefore no answer is required.

75. Paragraph 75 does not contain allegations and therefore no response is required.

[THE FIRST AMENDED COMPLAINT'S] PRAYER FOR RELIEF

eBay denies that Plaintiff is entitled to any of the relief sought in its prayer for relief against eBay. eBay denies the alleged infringement of the '507 or '682 patents. The '507 and '682 patents are invalid. Plaintiff is not entitled to recover damages, injunctive relief, costs, fees, interest, or any other type of recovery from eBay. Plaintiff's prayer against eBay should, therefore, be denied in its entirety and with prejudice, and Plaintiff should take nothing.

AFFIRMATIVE AND OTHER DEFENSES

Further answering the First Amended Complaint, eBay asserts the following defenses without assuming any burden that it would not otherwise have. eBay reserves the right to amend its answer with additional defenses as further information is obtained.

First Defense: Non-Infringement of the Asserted Patents

1. eBay has not infringed, literally or by the doctrine of equivalents, any valid claim of the '507 or '682 patents, and is not liable for infringement thereof.

KLARQUIST SPARKMAN, LLP
121 SW Salmon Street, Suite 1600
Portland, OR 97204
Tel: (503) 595-5300; Fax: (503) 595-5301

Second Defense: Invalidity of the Asserted Patents

2. The claims of the '507 and '682 patents are invalid for failing to comply with the provisions of Title 35 U.S.C., including, without limitation, one or more of 35 U.S.C. §§ 101, 102, 103, 112 *et seq.*

Third Defense: Failure to State a Claim

3. Plaintiff has failed to state a claim for infringement under 35 U.S.C. § 271.

Fourth Defense: Use/Manufacture By/For United States Government

4. To the extent that any accused method, system, apparatus, and/or product has been used or manufactured by or for the United States, Plaintiff's claims and demands for relief are barred by 28 U.S.C. § 1498.

Fifth Defense: Dedication to the Public

5. Plaintiff has dedicated to the public all methods, systems, apparatus, computer readable media and/or products disclosed in the asserted patent, but not literally claimed therein, and is estopped from claiming infringement by any such public domain methods, systems, apparatus, computer readable media and/or products.

Sixth Defense: Equitable Defenses

6. Plaintiff's claims may be barred, in whole or in part, by estoppel, laches, waiver, and/or other equitable doctrines.

Seventh Defense: Lack of Standing

7. Plaintiff has not pled sufficient facts to establish standing and may be unable to sustain its burden of proving standing.

Eighth Defense: Failure to Mitigate Damages

8. Plaintiff's claims are barred, in whole or in part, by its failure to mitigate damages.

KLARQUIST SPARKMAN, LLP
121 SW Salmon Street, Suite 1600
Portland, OR 97204
Tel: (503) 595-5300; Fax: (503) 595-5301

Ninth Defense: Sections 284-288

9. On information and belief, Plaintiff has failed to meet the requirements of 35 U.S.C. §§ 287 or 288.

10. Plaintiff did not notify eBay of the '507 or '682 patents prior to commencing this lawsuit against eBay.

11. If Plaintiff is entitled to recover any damages, which eBay denies, it is not entitled to recover increased damages under 35 U.S.C. §§ 284 and 285.

Tenth Defense: Reverse Doctrine Of Equivalents

12. What Plaintiff accuses operates in ways substantially different in principle from the way the purported invention described in the '507 and '682 patents operates, and Plaintiff cannot sustain its burden of proving otherwise.

Eleventh Defense: Prosecution History Estoppel

13. Plaintiff is estopped from making any assertion inconsistent with or negating any argument, representation, or position taken in the course of prosecuting the applications that issued as the '507 patent and/or '682 patent.

Twelfth Defense: No Entitlement To An Injunction

14. On information and belief, Plaintiff does not presently engage in current commercial activity that practices any claim of the '507 patent or '682 patent.

15. Plaintiff cannot show that it has suffered or will suffer any irreparable injury as a result of eBay's actions.

16. Plaintiff cannot show that remedies available at law, such as monetary damages, are inadequate to compensate for any alleged injury caused by eBay's actions.

17. Plaintiff cannot show that, considering the balance of hardships between Plaintiff and eBay, a remedy in equity is warranted.

18. Plaintiff cannot show that the public interest favors an injunction against eBay.

KLARQUIST SPARKMAN, LLP
121 SW Salmon Street, Suite 1600
Portland, OR 97204
Tel: (503) 595-5300; Fax: (503) 595-5301

19. Plaintiff can meet none of the requirements for an injunction. Plaintiff is not entitled to an injunction.

Thirteenth Defense: Indispensable Parties

20. Those parties retaining rights in the '507 patent and/or the '682 patent are indispensable parties who must be joined.

PRAYER FOR RELIEF

WHEREFORE, eBay prays for the following relief:

A. That Plaintiff take nothing by its Complaint, and that the Court dismiss the Complaint with prejudice and enter judgment in eBay's favor;

B. That the Court enter a judgment that this is an exceptional case pursuant to 35 U.S.C. § 285, and award eBay its costs and reasonable attorneys' fees, together with interest, including prejudgment interest, thereon; and

C. That the Court grant such other and further relief as may be deemed just and appropriate.

DEMAND FOR A JURY TRIAL

In accordance with Fed. R. Civ. P. 38(b), eBay hereby demands a jury trial on all issues so triable.

COUNTERCLAIMS FOR DECLARATORY JUDGMENT

Counterclaim-Plaintiff eBay Inc. ("eBay"), for its counterclaims against Interval Licensing LLC ("Plaintiff") alleges as follows:

PARTIES

1. eBay Inc. is a Delaware corporation with a principal place of business in San Jose, California.

KLARQUIST SPARKMAN, LLP
121 SW Salmon Street, Suite 1600
Portland, OR 97204
Tel: (503) 595-5300; Fax: (503) 595-5301

2. According to paragraph 1 of the First Amended Complaint, Plaintiff Interval Licensing has a principal place of business in Seattle, Washington and is a Washington limited liability company.

JURISDICTION

3. This is an action for a declaration of non-infringement and invalidity of the '507 patent and the '682 patent. This Court has jurisdiction over these counterclaims pursuant to 35 U.S.C. §§ 1331, 1338, and 2201.

4. Plaintiff is subject to personal jurisdiction in this District for at least the reason that, on information and belief, Plaintiff has a principal place of business in this District.

5. An actual case and controversy exists between Plaintiff and eBay based on Plaintiff having filed a Complaint alleging that it holds all rights and interest in the '507 patent and '682 patent and alleging that eBay infringes the '507 patent and the '682 patent. Thus, this controversy is ripe for adjudication by this Court.

COUNT ONE

DECLARATION OF NON-INFRINGEMENT OF THE '507 PATENT

6. eBay incorporates and realleges the allegations of paragraphs 1-5 of these counterclaims.

7. eBay has not infringed, literally or by the doctrine of equivalents, any claim of the '507 patent asserted against it, and is not liable for infringement thereof.

8. To resolve the legal and factual questions raised by Plaintiff, and to afford eBay relief from the uncertainty and controversy precipitated by Plaintiff's accusations against it, eBay is entitled to a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 that eBay does not infringe and has not infringed any claim of the '507 patent asserted against it.

KLARQUIST SPARKMAN, LLP
121 SW Salmon Street, Suite 1600
Portland, OR 97204
Tel: (503) 595-5300; Fax: (503) 595-5301

COUNT TWO

DECLARATION OF NON-INFRINGEMENT OF THE '682 PATENT

9. eBay incorporates and realleges the allegations of paragraphs 1-5 of these counterclaims.

10. eBay has not infringed, literally or by the doctrine of equivalents, any claim of the '682 patent asserted against it, and is not liable for infringement thereof.

11. To resolve the legal and factual questions raised by Plaintiff, and to afford eBay relief from the uncertainty and controversy precipitated by Plaintiff's accusations against it, eBay is entitled to a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 that eBay does not infringe and has not infringed any claim of the '682 patent asserted against it.

COUNT THREE

DECLARATION OF INVALIDITY OF THE '507 PATENT

12. eBay incorporates and realleges the allegations of paragraphs 1-5 of these counterclaims.

13. The claims of the '507 patent asserted against eBay are invalid under one or more sections of Title 35 of the United States Code, including without limitation 35 U.S.C. §§ 101, 102, 103, and 112.

14. To resolve the legal and factual questions raised by Plaintiff, and to afford eBay relief from the uncertainty and controversy precipitated by Plaintiff's accusations against it, eBay is entitled to a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 that the claims of the '507 patent asserted against it are invalid.

COUNT FOUR

DECLARATION OF INVALIDITY OF THE '682 PATENT

15. eBay incorporates and realleges the allegations of paragraphs 1-5 of these counterclaims.

KLARQUIST SPARKMAN, LLP
121 SW Salmon Street, Suite 1600
Portland, OR 97204
Tel: (503) 595-5300; Fax: (503) 595-5301

16. The claims of the '682 patent asserted against eBay are invalid under one or more sections of Title 35 of the United States Code, including without limitation 35 U.S.C. §§ 101, 102, 103, and 112.

17. To resolve the legal and factual questions raised by Plaintiff, and to afford eBay relief from the uncertainty and controversy precipitated by Plaintiff's accusations against it, eBay is entitled to a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 that the claims of the '682 patent asserted against it are invalid.

DEMAND FOR A JURY TRIAL

In accordance with Fed. R. Civ. P. 38(b), eBay hereby demands a jury trial on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, eBay prays for the following relief:

A. A judgment for eBay and against Plaintiff, dismissing with prejudice Plaintiff's First Amended Complaint and all claims asserted therein against eBay;

B. A judgment declaring that the claims of the '507 and '682 patents asserted against eBay have not been infringed by eBay;

C. A judgment declaring that the claims of the '507 and '682 patents asserted against eBay are invalid;

D. A judgment that this is an exceptional case pursuant to 35 U.S.C. § 285, and an award to eBay of its costs and reasonable attorneys' fees, together with interest, including prejudgment interest, thereon; and

E. Such other and further relief as may be deemed just and appropriate.

DATED this 14th day of January, 2011.

KLARQUIST SPARKMAN, LLP

KLARQUIST SPARKMAN, LLP
121 SW Salmon Street, Suite 1600
Portland, OR 97204
Tel: (503) 595-5300; Fax: (503) 595-5301

By: /s/ Klaus H. Hamm

J. Christopher Carraway, WSBA NO. 37944
Kristin L. Cleveland (*pro hac vice*)
Klaus H. Hamm (*pro hac vice*)
Derrick W. Toddy (*pro hac vice*)
John D. Vandenberg, WSBA NO. 38445
121 S.W. Salmon Street, Suite 1600
Portland, Oregon 97204
Telephone: (503) 595-5300
Facsimile: (503) 595-5301
E-mail: chris.carraway@klarquist.com
john.vandenberg@klarquist.com
kristin.cleveland@klarquist.com
klaus.hamm@klarquist.com
derrick.toddy@klarquist.com

Attorneys for Defendants eBay Inc., Netflix, Inc., Office Depot, Inc., and Staples, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on January 14, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel who are deemed to have consented to electronic service.

By: /s/ Klaus H. Hamm

Klaus H. Hamm (*pro hac vice*)
KLARQUIST SPARKMAN, LLP
121 S.W. Salmon Street, Suite 1600
Portland, Oregon 97204
Telephone: (503) 595-5300
Facsimile: (503) 595-5301
E-mail: klaus.hamm@klarquist.com