

HON. MARSHA J. PECHMAN

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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

**NETFLIX, INC.’S ANSWER TO FIRST
AMENDED COMPLAINT,
AFFIRMATIVE DEFENSES AND
COUNTERCLAIMS**

JURY DEMAND

Defendant Netflix, Inc. (“Netflix”) 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. Netflix is without information or knowledge sufficient to admit or deny the allegations of paragraph 1 of the First Amended Complaint.

2-6. The allegations in paragraphs 2-6 are not asserted against Netflix and therefore no answer is required.

7. Admitted.

1 8-12. The allegations in paragraphs 8-12 are not asserted against Netflix and therefore
2 no answer is required.

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

9 14. Netflix admits that Paul Allen and Bill Gates co-founded Microsoft Corporation
10 in 1975. Netflix is without information or knowledge sufficient to admit or deny the remaining
11 allegations of paragraph 14 of the First Amended Complaint.

12 15. Netflix denies that Interval Research was ever one of the preeminent technology
13 firms. Netflix is without information or knowledge sufficient to admit or deny the remaining
14 allegations of paragraph 15 of the First Amended Complaint.

15 16. Netflix is without information or knowledge sufficient to admit or deny the
16 allegations of paragraph 16 of the First Amended Complaint.

17 17. Netflix is without information or knowledge sufficient to admit or deny the
18 allegations of paragraph 17 of the First Amended Complaint.

19 18. Netflix is without information or knowledge sufficient to admit or deny the
20 allegations of paragraph 18 of the First Amended Complaint.

21 19. Netflix is without information or knowledge sufficient to admit or deny the
22 allegations of paragraph 19 of the First Amended Complaint.

23 20. Netflix admits that Exhibit 2 to the First Amended Complaint, on its face,
24 purports to be a copy of U.S. Patent No. 6,263,507 B1 ("507 patent"), issued on July 17, 2001,
25 which is entitled "Browser for Use in Navigating a Body of Information, With Particular
26 Application to Browsing Information Represented By Audiovisual Data." Netflix denies that the
27

1 '507 patent was "duly and legally issued for an invention." Netflix is without information or
2 knowledge sufficient to admit or deny the remaining allegations set forth in paragraph 20 of the
3 First Amended Complaint.

4 21-29. The allegations in paragraphs 21-29 are not asserted against Netflix and therefore
5 no answer is required.

6 30. Netflix admits that it operates the Netflix.com website, and that this website
7 provides information about movies and television shows to certain website visitors. Netflix
8 denies the remaining allegations of paragraph 30.

9 31-37. The allegations in paragraphs 31-37 are not asserted against Netflix and therefore
10 no answer is required.

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

13 39-58. The allegations in paragraphs 39-58 are not asserted against Netflix and therefore
14 no answer is required.

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

21 60-67. The allegations in paragraphs 60-67 are not asserted against Netflix and therefore
22 no answer is required.

23 68. Netflix admits that it operates the Netflix.com website, and that this website
24 provides movie and television show recommendations to certain website visitors. Netflix admits
25 that the Netflix.com website provides recommendations in the "Movies You'll ♥" section to
26 certain website visitors. Netflix admits that information regarding certain activities of certain
27

1 Netflix.com website visitors can be used in determining recommendations to provide to certain
2 website visitors. Netflix denies the remaining allegations of paragraph 68.

3 69-73. The allegations in paragraphs 64-73 are not asserted against Netflix and therefore
4 no answer is required.

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

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

8 **[THE FIRST AMENDED COMPLAINT'S] PRAYER FOR RELIEF**

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

14 **AFFIRMATIVE AND OTHER DEFENSES**

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

18 **First Defense: Non-Infringement of the Asserted Patents**

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

21 **Second Defense: Invalidity of the Asserted Patents**

22 2. The claims of the '507 and '682 patents are invalid for failing to comply with the
23 provisions of Title 35 U.S.C., including, without limitation, one or more of 35 U.S.C. §§ 101,
24 102, 103, 112 *et seq.*

25 **Third Defense: Failure to State a Claim**

26 3. Plaintiff has failed to state a claim for infringement under 35 U.S.C. § 271.
27

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

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

5 **Fifth Defense: Dedication to the Public**

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

10 **Sixth Defense: Equitable Defenses**

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

13 **Seventh Defense: Lack of Standing**

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

16 **Eighth Defense: Failure to Mitigate Damages**

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

19 **Ninth Defense: Sections 284-288**

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

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

24 11. If Plaintiff is entitled to recover any damages, which Netflix denies, it is not
25 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 Netflix'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 Netflix's actions.

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

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

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.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Netflix prays for the following relief:

3 A. That Plaintiff take nothing by its Complaint, and that the Court dismiss the
4 Complaint with prejudice and enter judgment in Netflix’s favor;

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

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

10 **DEMAND FOR A JURY TRIAL**

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

13 **COUNTERCLAIMS FOR DECLARATORY JUDGMENT**

14 Counterclaim-Plaintiff Netflix, Inc. (“Netflix”), for its counterclaims against Interval
15 Licensing LLC (“Plaintiff”) alleges as follows:

16 **PARTIES**

17 1. Netflix, Inc. is a Delaware corporation with a principal place of business in Los
18 Gatos, California.

19 2. According to paragraph 1 of the First Amended Complaint, Plaintiff Interval
20 Licensing has a principal place of business in Seattle, Washington and is a Washington limited
21 liability company.
22

23 **JURISDICTION**

24 3. This is an action for a declaration of non-infringement and invalidity of the ’507
25 patent and the ’682 patent. This Court has jurisdiction over these counterclaims pursuant to 35
26 U.S.C. §§ 1331, 1338, and 2201.
27

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

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

7 **COUNT ONE**

8 **DECLARATION OF NON-INFRINGEMENT OF THE '507 PATENT**

9 6. Netflix incorporates and realleges the allegations of paragraphs 1-5 of these
10 counterclaims.

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

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

18 **COUNT TWO**

19 **DECLARATION OF NON-INFRINGEMENT OF THE '682 PATENT**

20 9. Netflix incorporates and realleges the allegations of paragraphs 1-5 of these
21 counterclaims.

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

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

3 **COUNT THREE**

4 **DECLARATION OF INVALIDITY OF THE '507 PATENT**

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

7 13. The claims of the '507 patent asserted against Netflix are invalid under one or
8 more sections of Title 35 of the United States Code, including without limitation 35 U.S.C. §§
9 101, 102, 103, and 112.

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

14 **COUNT FOUR**

15 **DECLARATION OF INVALIDITY OF THE '682 PATENT**

16 15. Netflix incorporates and realleges the allegations of paragraphs 1-5 of these
17 counterclaims.

18 16. The claims of the '682 patent asserted against Netflix are invalid under one or
19 more sections of Title 35 of the United States Code, including without limitation 35 U.S.C. §§
20 101, 102, 103, and 112.

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

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DEMAND FOR A JURY TRIAL

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

PRAYER FOR RELIEF

WHEREFORE, Netflix prays for the following relief:

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

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

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

D. A judgment that this is an exceptional case pursuant to 35 U.S.C. § 285, and an award to Netflix 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

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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
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