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HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

INTERVAL LICENSING LLC,
Plaintiff,
v.
AOL, INC., et al.,
Defendants.

Case No. No. 2:10-cv-01385-MJP

**FACEBOOK , INC.’S ANSWER AND
COUNTERCLAIMS TO INTERVAL LICENSING
LLC’S FIRST AMENDED COMPLAINT FOR
PATENT INFRINGEMENT**

JURY TRIAL DEMANDED

**ANSWER TO INTERVAL LICENSING LLC’S
FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Defendant and Counterclaimant Facebook, Inc. (“Facebook”), by and through the undersigned counsel, hereby submits the following Answer and Counterclaims to the First Amended Complaint filed by Plaintiff and Counterclaim-Defendant Interval Licensing, LLC (“Interval”).

THE PARTIES

1. Facebook lacks sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

1 committed acts of infringement in this district. With respect to the allegations in this paragraph
2 that relate to parties other than Facebook, Facebook lacks sufficient information to form a belief
3 as to the truth of those allegations, and on that basis denies them. Except as expressly admitted
4 herein, Facebook denies each and every allegation about Facebook set forth in this paragraph.

5 **INTERVAL RESEARCH CORPORATION WAS A PIONEER IN THE TECHNOLOGY INDUSTRY**

6 14. Facebook lacks sufficient information to form a belief as to the truth of the
7 allegations recited in this paragraph, and on that basis denies them.

8 15. Facebook lacks sufficient information to form a belief as to the truth of the
9 allegations recited in this paragraph, and on that basis denies them.

10 16. Facebook lacks sufficient information to form a belief as to the truth of the
11 allegations recited in this paragraph, and on that basis denies them.

12 17. Facebook lacks sufficient information to form a belief as to the truth of the
13 allegations recited in this paragraph, and on that basis denies them.

14 18. Facebook lacks sufficient information to form a belief as to the truth of the
15 allegations recited in this paragraph, and on that basis denies them.

16 19. Facebook lacks sufficient information to form a belief as to the truth of the
17 allegations recited in this paragraph, and on that basis denies them.

18 **ALLEGED INFRINGEMENT OF U.S. PATENT NO. 6,263,507**

19 20. Facebook admits that the face of U.S. Patent No. 6,263,507 (“the ’507 patent”),
20 issued July 17, 2001, is entitled “Browser for Use in Navigating a Body of Information, With
21 Particular Application to Browsing Information Represented by Audiovisual Data.” Facebook
22 admits that a copy of the ’507 patent was attached to the First Amended Complaint as Exhibit 2.
23 Facebook denies that the ’507 patent was duly and legally issued. Except as expressly admitted
24 herein, Facebook lacks sufficient information to form a belief as to the truth of the remaining
25 allegations recited in this paragraph, and on that basis denies them.

26 21. Facebook lacks sufficient information to form a belief as to the truth of the
27 allegations recited in this paragraph, and on that basis denies them.

1 22. Facebook lacks sufficient information to form a belief as to the truth of the allegations
2 recited in this paragraph, and on that basis denies them.

3 23. Facebook lacks sufficient information to form a belief as to the truth of the
4 allegations recited in this paragraph, and on that basis denies them.

5 24. Facebook lacks sufficient information to form a belief as to the truth of the
6 allegations recited in this paragraph, and on that basis denies them.

7 25. Facebook admits that it operates a website that can be found at
8 www.facebook.com. Facebook further admits that the www.facebook.com website contains
9 information. Facebook admits that Interval has attached as Exhibit 9 what appears to be a
10 screenshot from the Facebook website. Except as expressly admitted herein, Facebook denies all
11 other allegations recited in this paragraph, and specifically denies that it has infringed or is
12 infringing the '507 patent.

13 26. Facebook lacks sufficient information to form a belief as to the truth of the
14 allegations recited in this paragraph, and on that basis denies them.

15 27. Facebook lacks sufficient information to form a belief as to the truth of the
16 allegations recited in this paragraph, and on that basis denies them.

17 28. Facebook lacks sufficient information to form a belief as to the truth of the
18 allegations recited in this paragraph, and on that basis denies them.

19 29. Facebook lacks sufficient information to form a belief as to the truth of the
20 allegations recited in this paragraph, and on that basis denies them.

21 30. Facebook lacks sufficient information to form a belief as to the truth of the
22 allegations recited in this paragraph, and on that basis denies them.

23 31. Facebook lacks sufficient information to form a belief as to the truth of the
24 allegations recited in this paragraph, and on that basis denies them.

25 32. Facebook lacks sufficient information to form a belief as to the truth of the
26 allegations recited in this paragraph, and on that basis denies them.

27 33. Facebook lacks sufficient information to form a belief as to the truth of the
28 allegations recited in this paragraph, and on that basis denies them.

1 34. Facebook lacks sufficient information to form a belief as to the truth of the
2 allegations recited in this paragraph, and on that basis denies them.

3 35. Facebook lacks sufficient information to form a belief as to the truth of the
4 allegations recited in this paragraph, and on that basis denies them.

5 36. Facebook lacks sufficient information to form a belief as to the truth of the
6 allegations recited in this paragraph, and on that basis denies them.

7 37. Facebook lacks sufficient information to form a belief as to the truth of the
8 allegations recited in this paragraph, and on that basis denies them.

9 38. Facebook denies that it has infringed or is infringing the '507 patent. Facebook
10 denies that Interval is entitled to recover damages from Facebook. Facebook denies that Interval
11 will be harmed by Facebook's actions unless Facebook is enjoined by this Court. With respect to
12 the allegations of this paragraph that relate to parties other than Facebook, Facebook lacks
13 sufficient information to form a belief as to the truth of those allegations, and on that basis denies
14 them. Facebook denies all other allegations about Facebook recited in this paragraph. Insofar as
15 Interval reserves the right to allege that Facebook has willfully infringed without leave of this
16 Court, Facebook objects as this would be improper.

17 **INFRINGEMENT OF U.S. PATENT NO. 6,034,652**

18 39. Facebook admits that the face of U.S. Patent No. 6,034,652 ("the '652 patent"),
19 issued March 7, 2000, is entitled "Attention Manager for Occupying the Peripheral Attention of a
20 Person in the Vicinity of a Display Device," and is related to the '314 patent. Facebook admits
21 that a copy of the '652 patent was attached to the First Amended Complaint as Exhibit 3. Except
22 as expressly admitted herein, Facebook lacks sufficient information to form a belief as to the truth
23 of the remaining allegations recited in this paragraph, and on that basis denies them.

24 40. Facebook lacks sufficient information to form a belief as to the truth of the
25 allegations recited in this paragraph, and on that basis denies them.

26 41. Facebook lacks sufficient information to form a belief as to the truth of the
27 allegations recited in this paragraph, and on that basis denies them.

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1 42. Facebook lacks sufficient information to form a belief as to the truth of the
2 allegations recited in this paragraph, and on that basis denies them.

3 43. Facebook lacks sufficient information to form a belief as to the truth of the
4 allegations recited in this paragraph, and on that basis denies them.

5 44. Facebook lacks sufficient information to form a belief as to the truth of the
6 allegations recited in this paragraph, and on that basis denies them.

7 45. Facebook lacks sufficient information to form a belief as to the truth of the
8 allegations recited in this paragraph, and on that basis denies them.

9 46. Facebook lacks sufficient information to form a belief as to the truth of the
10 allegations recited in this paragraph, and on that basis denies them.

11 47. Facebook lacks sufficient information to form a belief as to the truth of the
12 allegations recited in this paragraph, and on that basis denies them.

13 48. Facebook lacks sufficient information to form a belief as to the truth of the
14 allegations recited in this paragraph, and on that basis denies them.

15 **INFRINGEMENT OF U.S. PATENT NO. 6,788,314**

16 49. Facebook admits that the face of U.S. Patent No. 6,788,314 (“the ’314 patent”),
17 issued September 7, 2004, is entitled “Attention Manager for Occupying the Peripheral Attention
18 of a Person in the Vicinity of a Display Device,” and is related to the ’652 patent. Facebook
19 admits that a copy of the ’314 patent was attached to the First Amended Complaint as Exhibit 4.
20 Except as expressly admitted herein, Facebook lacks sufficient information to form a belief as to
21 the truth of the remaining allegations recited in this paragraph, and on that basis denies them.

22 50. Facebook lacks sufficient information to form a belief as to the truth of the
23 allegations recited in this paragraph, and on that basis denies them.

24 51. Facebook lacks sufficient information to form a belief as to the truth of the
25 allegations recited in this paragraph, and on that basis denies them.

26 52. Facebook lacks sufficient information to form a belief as to the truth of the
27 allegations recited in this paragraph, and on that basis denies them.

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1 53. Facebook lacks sufficient information to form a belief as to the truth of the
2 allegations recited in this paragraph, and on that basis denies them.

3 54. Facebook lacks sufficient information to form a belief as to the truth of the
4 allegations recited in this paragraph, and on that basis denies them.

5 55. Facebook lacks sufficient information to form a belief as to the truth of the
6 allegations recited in this paragraph, and on that basis denies them.

7 56. Facebook lacks sufficient information to form a belief as to the truth of the
8 allegations recited in this paragraph, and on that basis denies them.

9 57. Facebook lacks sufficient information to form a belief as to the truth of the
10 allegations recited in this paragraph, and on that basis denies them.

11 58. Facebook lacks sufficient information to form a belief as to the truth of the
12 allegations recited in this paragraph, and on that basis denies them.

13 **INFRINGEMENT OF U.S. PATENT NO. 6,757,682**

14 59. Facebook admits that the face of U.S. Patent No. 6,757,682 (“the ’682 patent”),
15 issued June 29, 2004, is entitled “Alerting Users to Items of Current Interest.” Facebook admits
16 that a copy of the ’682 patent was attached to the First Amended Complaint as Exhibit 5.
17 Facebook denies that the ’682 patent was duly and legally issued. Except as expressly admitted
18 herein, Facebook lacks sufficient information to form a belief as to the truth of the remaining
19 allegations recited in this paragraph, and on that basis denies them.

20 60. Facebook lacks sufficient information to form a belief as to the truth of the
21 allegations recited in this paragraph, and on that basis denies them.

22 61. Facebook lacks sufficient information to form a belief as to the truth of the
23 allegations recited in this paragraph, and on that basis denies them.

24 62. Facebook lacks sufficient information to form a belief as to the truth of the
25 allegations recited in this paragraph, and on that basis denies them.

26 63. Facebook lacks sufficient information to form a belief as to the truth of the
27 allegations recited in this paragraph, and on that basis denies them.

28

1 64. Facebook admits that it operates a website that can be found at
2 www.facebook.com. Facebook admits that there is a “News Feed” feature on the
3 www.facebook.com website. Facebook admits that there is a feature on the www.facebook.com
4 website called “People You May Know.” Facebook admits that Interval has attached as Exhibit
5 32 what appears to be a screenshot from the Facebook website at www.facebook.com. Except as
6 expressly admitted herein, Facebook denies all other allegations recited in this paragraph, and
7 specifically denies that it has infringed or is infringing the ’682 patent.

8 65. Facebook lacks sufficient information to form a belief as to the truth of the
9 allegations recited in this paragraph, and on that basis denies them.

10 66. Facebook lacks sufficient information to form a belief as to the truth of the
11 allegations recited in this paragraph, and on that basis denies them.

12 67. Facebook lacks sufficient information to form a belief as to the truth of the
13 allegations recited in this paragraph, and on that basis denies them.

14 68. Facebook lacks sufficient information to form a belief as to the truth of the
15 allegations recited in this paragraph, and on that basis denies them.

16 69. Facebook lacks sufficient information to form a belief as to the truth of the
17 allegations recited in this paragraph, and on that basis denies them.

18 70. Facebook lacks sufficient information to form a belief as to the truth of the
19 allegations recited in this paragraph, and on that basis denies them.

20 71. Facebook lacks sufficient information to form a belief as to the truth of the
21 allegations recited in this paragraph, and on that basis denies them.

22 72. Facebook lacks sufficient information to form a belief as to the truth of the
23 allegations recited in this paragraph, and on that basis denies them.

24 73. Facebook lacks sufficient information to form a belief as to the truth of the
25 allegations recited in this paragraph, and on that basis denies them.

26 74. Facebook denies that it has infringed or is infringing the ’682 patent. Facebook
27 denies that Interval is entitled to recover damages from Facebook. Facebook denies that Interval
28 will be harmed by Facebook’s actions unless Facebook is enjoined by this Court. With respect to

1 the allegations of this paragraph that relate to parties other than Facebook, Facebook lacks
2 sufficient information to form a belief as to the truth of those allegations, and on that basis denies
3 them. Facebook denies all other allegations about Facebook recited in this paragraph. Insofar as
4 Interval reserves the right to allege that Facebook has willfully infringed without leave of this
5 Court, Facebook objects as this would be improper.

6 **JURY DEMAND**

7 75. This paragraph sets forth Interval's request for a jury trial, to which no response is
8 required.

9 **INTERVAL'S PRAYER FOR RELIEF**

10 Facebook incorporates by reference all preceding paragraphs of this Answer as if fully set
11 forth herein. Facebook denies that Interval is entitled to any relief sought in Interval's Prayer for
12 Relief against Facebook.

13
14 **FACEBOOK'S AFFIRMATIVE DEFENSES**

15 **First Affirmative Defense: Non-Infringement**

16 1. Facebook is not infringing, and has not infringed, directly, contributorily, or by
17 inducement any claims of the '507 patent, either literally or under the doctrine of equivalents.

18 2. Facebook is not infringing, and has not infringed, directly, contributorily, or by
19 inducement any claims of the '682 patent, either literally or under the doctrine of equivalents.

20 **Second Affirmative Defense: Invalidity**

21 3. One or more of the claims of the '507 patent are invalid for failure to satisfy the
22 conditions for patentability under the Patent Laws of the United States, including but not limited
23 to 35 U.S.C. §§ 101 *et. seq.*

24 4. One or more of the claims of the '682 patent are invalid for failure to satisfy the
25 conditions for patentability under the Patent Laws of the United States, including but not limited
26 to 35 U.S.C. §§ 101 *et. seq.*

1 **Third Affirmative Defense: Failure to State a Claim**

2 5. Plaintiff's First Amended Complaint fails to state a claim upon which relief can be
3 granted.

4 **Fourth Affirmative Defense: No Injunctive Relief**

5 6. Plaintiff's demand to enjoin Facebook is barred, as Plaintiff has suffered neither
6 harm nor irreparable harm from Facebook's actions.

7 **Fifth Affirmative Defense: Failure to Mark**

8 7. Plaintiff's pre-lawsuit claim for damages are barred, in whole or in part, for failure
9 to comply with 35 U.S.C. § 287.

10 **Sixth Affirmative Defense: Prosecution History Estoppel**

11 8. Interval is estopped from construing any valid claim of the '507 patent to cover or
12 include, either literally or by application of the doctrine of equivalents, any product or service
13 manufactured, used, imported, sold or offered by Facebook because of admissions and statements
14 to the United States Patent and Trademark Office in the specification of the '507 patent and
15 during prosecution of the application leading to the issuance of the '507 patent.

16 9. Interval is estopped from construing any valid claim of the '682 patent to cover or
17 include, either literally or by application of the doctrine of equivalents, any product or service
18 manufactured, used, imported, sold or offered by Facebook because of admissions and statements
19 to the United States Patent and Trademark Office in the specification of the '682 patent and
20 during prosecution of the application leading to the issuance of the '682 patent.

21 **Seventh Affirmative Defense: Improper Joinder**

22 10. On information and belief, some or all of the defendants have been improperly
23 joined in a single action, and Facebook asserts its right to a separate trial.

24 **Eighth Affirmative Defense: Preclusion of Costs**

25 11. Interval is precluded from recovering costs under 35 U.S.C. § 288.

26 **Other Affirmative Defenses**

27 12. Facebook reserves all other affirmative defenses pursuant to rule 8(c) of the
28 Federal Rules of Civil Procedure, the Patent Laws of the United States, and any other defenses at

1 law or in equity, that now exist or in the future may be available based on discovery and further
2 factual investigation in this case.

3
4
5 **COUNTERCLAIMS**

6 Defendant and Counterclaimant Facebook, Inc. (“Facebook”), by and through its
7 undersigned counsel, hereby alleges the following counterclaims against Plaintiff and
8 Counterclaim-Defendant Interval Licensing, LLC (“Interval”).

9 **The Parties**

10 13. Facebook is a corporation duly organized and existing under the laws of the State
11 of Delaware, having its principal place of business at 1601 S. California Avenue, Palo Alto,
12 California 94304.

13 14. Facebook is informed and believes, and on that basis alleges, that counterclaim-
14 defendant Interval is a limited liability company duly organized under the laws of the state of
15 Washington, with its principal place of business at 505 Fifth Avenue South, Suite 900, Seattle,
16 WA 98104.

17 **Jurisdiction and Venue**

18 15. This is a civil action regarding allegations of patent infringement arising under the
19 Patent Laws of the United States, Title 35 of the United States Code, in which Facebook seeks
20 relief under the Declaratory Judgment Act. This Court has subject matter jurisdiction over this
21 matter pursuant to 28 U.S.C. §§ 1331, 1338, 2201, 2202.

22 16. The Court has personal jurisdiction and venue over Interval because it consented
23 to personal jurisdiction and venue by filing the Complaint in this action. To the extent that venue
24 is found to be proper under 28 U.S.C. § 1400 for any claims in the Complaint, venue is also
25 appropriate under 28 U.S.C. § 1400 for these Counterclaims. However, Facebook reserves the
26 right to contend that the more appropriate venue for the claims in the Complaint and in these
27 Counterclaims is the Northern District of California.

Actual Controversy

17. Interval claims to be the assignee of the complete interest in the United States Patent No. 6,263,507 (“the ’507 patent”), entitled “Browser for Use in Navigating a Body of Information, With Particular Application to Browsing Information Represented by Audiovisual Data.” Interval alleged that Facebook has and continues to infringe the ’507 patent.

18. Interval claims to be the assignee of the complete interest in the United States Patent No. 6,757,682 (“the ’682 patent”), entitled “Alerting Users to Items of Current Interest.” Interval alleged that Facebook has and continues to infringe the ’682 patent.

19. An actual controversy, within the meaning of 28 U.S.C. §§ 2201 and 2202, exists between Facebook and Interval. Facebook seeks a declaration that it does not infringe the ’507 patent or the ’682 patent, specific claims of the ’507 and ’682 patents are invalid, and that Intervals claims under the ’507 and ’682 patents are unenforceable.

COUNT I

(Declaratory Judgment of Non-Infringement of U.S. Patent No. 6,263,507)

20. Facebook incorporates by reference all preceding paragraphs of this Counterclaim as if fully set forth herein.

21. By this counterclaim, Facebook seeks a declaration that it does not infringe and has not infringed, either directly or indirectly, contributorily or by inducement any claim of the ’507 patent either literally or under the doctrine of equivalents and therefore is not liable for infringement thereof. Furthermore, Interval’s claims under the ’507 patent are barred for the reasons set forth above in Facebook’s Affirmative Defenses.

COUNT II

(Declaratory Judgment of Invalidity and/or Unenforceability of Claims 20-24, 27-28, 31, 34, 37, 63-67, 70-71, 74, 77 and 80 of U.S. Patent No. 6,263,507)

22. Facebook incorporates by reference all preceding paragraphs of this Counterclaim as if fully set forth herein.

23. Claims 20, 21, 22, 23, 24, 27, 28, 31, 34, 37, 63, 64, 65, 66, 67, 70, 71, 74, 77 and 80 of the ’507 patent are invalid for failing to comply with the provisions of the Patent Laws of

1 the United States, including one or more of 35 U.S.C. §§ 101, *et. seq.* Furthermore, these claims
2 under the '507 patent are unenforceable for the reasons set forth above in Facebook's Affirmative
3 Defenses.

4 **COUNT III**

5 **(Declaratory Judgment of Non-Infringement of U.S. Patent No. 6,757,682)**

6 24. Facebook incorporates by reference all preceding paragraphs of this Counterclaim
7 as if fully set forth herein.

8 25. By this counterclaim, Facebook seeks a declaration that it does not infringe and
9 has not infringed, either directly or indirectly, contributorily or by inducement any claim of the
10 '682 patent either literally or under the doctrine of equivalents and therefore is not liable for
11 infringement thereof. Furthermore, Interval's claims under the '682 patent are barred for the
12 reasons set forth above in Facebook's Affirmative Defenses.

13 **COUNT IV**

14 **(Declaratory Judgment of Invalidity and/or Unenforceability of Claims 1-9, 11-13, 16-17**
15 **and 20 of U.S. Patent No. 6,757,682)**

16 26. Facebook incorporates by reference all preceding paragraphs of this Counterclaim
17 as if fully set forth herein.

18 27. Claims 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 16, 17 and 20 of the '682 patent are
19 invalid for failing to comply with the provisions of the Patent Laws of the United States,
20 including one or more of 35 U.S.C. §§ 101, *et. seq.* Furthermore, these claims under the '682
21 patent are unenforceable for the reasons set forth above in Facebook's Affirmative Defenses.

22
23 **JURY DEMAND**

24 28. Facebook demands a trial by jury as to all issues so triable.

25
26 **Relief Requested by Facebook**

27 WHEREFORE, Facebook prays that this Court enter judgment:
28

1 A. In favor of Facebook, and against Interval, thereby dismissing Interval's First
2 Amended Complaint in its entirety, with prejudice, with Interval taking nothing by way of its
3 claims;

4 B. Declaring and adjudging that Facebook does not infringe the '507 patent;

5 C. Declaring and adjudging that claims 20-24, 27-28, 31, 34, 37, 63-67, 70-71, 74, 77
6 and 80 of the '507 patent are invalid and/or unenforceable;

7 D. Declaring and adjudging that Facebook does not infringe the '682 patent.

8 E. Declaring and adjudging that claims 1-9, 11-13, 16-17 and 20 of the '682 patent
9 are invalid and/or unenforceable;

10 F. Ordering Interval to pay all costs incurred by Facebook in this action;

11 G. That the Court find and declare that Facebook has not infringed, contributorily
12 infringed, or induced the infringement of, and is not now infringing, contributorily infringing, or
13 inducing the infringement of any valid claim of U.S. Patent No. 6,263,507, directly or indirectly,
14 under any subsection of 35 U.S.C. § 271;

15 H. That the Court find and declare that Facebook has not infringed, contributorily
16 infringed, or induced the infringement of, and is not now infringing, contributorily infringing, or
17 inducing the infringement of any valid claim of U.S. Patent No. 6,757,682, directly or indirectly,
18 under any subsection of 35 U.S.C. § 271;

19 I. Declaring that this is an exceptional case pursuant to 35 U.S.C. § 285 and ordering
20 Interval to pay Facebook's reasonable attorney's fees incurred in this action; and

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1 J. Awarding Facebook all other relief the Court deems just and proper.

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DATED this 14th day of January, 2011.

COOLEY LLP

/s/ Christopher B. Durbin

Christopher B. Durbin (WSBA #41159)

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Attorneys for Defendant FACEBOOK, INC.

908556/HN

CERTIFICATE OF SERVICE

I hereby certify that on January 14, 2011, I electronically filed the following document(s):
**Facebook , Inc.'s Answer and Counterclaims to Interval Licensing LLC's First Amended
Complaint for Patent Infringement** with the Clerk of the Court using the CM/ECF system,
which will send an email notification of such filing to the attorney(s) of record listed below.

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