

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

INTERVAL LICENSING LLC’S
ANSWER TO COUNTERCLAIMS

JURY DEMAND

**INTERVAL LICENSING LLC’S ANSWER TO
APPLE INC.’S COUNTERCLAIMS**

Plaintiff Interval Licensing LLC (“Interval”), by and through its attorneys, files this Answer to the counterclaims of Defendant and Counterclaimant Apple Inc. (“Apple”) and respectfully answers as follows:

Interval denies each and every averment set forth in the Counterclaims, except for those averments expressly and specifically admitted below. To the extent that the headings and non-numbered statements in the Counterclaims contain any averments, Interval denies each and every such averment.

1. Paragraphs 1-75 do not contain any allegations that require an answer. To the extent necessary, Interval incorporates by reference and realleges the allegations in its First Amended Complaint.

Affirmative Defenses

First Affirmative Defense: Non-Infringement

2. Interval denies the allegations in ¶ 76.

Second Affirmative Defense: Invalidity

3. Interval denies the allegations in ¶ 77.

Third Affirmative Defense: Estoppel and Laches

4. Paragraph 78 contains legal conclusions that require no response. To the extent a response is required, Interval denies the allegations in ¶ 78.

Fourth Affirmative Defense: No Injunction

5. Paragraph 79 contains legal conclusions that require no response. To the extent a response is required, Interval denies the allegations in ¶ 79.

Fifth Affirmative Defense: Improper Joinder

6. Paragraph 80 contains legal conclusions that require no response. To the extent a response is required, Interval denies the allegations in ¶ 80.

Sixth Affirmative Defense: Preclusion of Cost

7. Paragraph 81 contains legal conclusions that require no response. To the extent a response is required, Interval denies the allegations in ¶ 81.

Seventh Affirmative Defense: Notice

8. Paragraph 82 contains legal conclusions that require no response. To the extent a response is required, Interval denies the allegations in ¶ 82.

COUNTERCLAIMS

The Parties

9. Interval is without sufficient information to admit or deny the allegations made in ¶ 83, and therefore denies those allegations.

10. Interval admits the allegations in ¶ 84.

Jurisdiction and Venue

11. Interval admits the allegations in ¶ 85.

1 12. Interval admits the allegations in ¶ 86.

2 13. Interval admits the allegations in ¶ 87.

3 **FIRST COUNTERCLAIM**

4 **(Declaratory Judgment of Non-Infringement of the '507 Patent)**

5 14. Interval incorporates by reference its responses to paragraphs 76 to 87 as if fully set forth
6 herein.

7 15. Interval admits the allegations in ¶ 89 that an actual controversy exists between Apple and
8 Interval as to whether Apple infringes the '507 patent.

9 16. Interval admits the allegations in ¶ 90 that by asserting its Counterclaims, Apple seeks a
10 declaration that it has not infringed the '507 patent.

11 **SECOND COUNTERCLAIM**

12 **(Declaratory Judgment of Non-Infringement of the '652 Patent)**

13 17. Interval incorporates by reference its responses to paragraphs 76 to 90 as if fully set forth
14 herein.

15 18. Interval admits the allegations in ¶ 92 that an actual controversy exists between Apple and
16 Interval as to whether Apple infringes the '652 patent.

17 19. Interval admits the allegations in ¶ 93 that by asserting its Counterclaims, Apple seeks a
18 declaration that it has not infringed the '652 patent.

19 **THIRD COUNTERCLAIM**

20 **(Declaratory Judgment of Non-Infringement of the '314 Patent)**

21 20. Interval incorporates by reference its responses to paragraphs 76 to 93 as if fully set forth
22 herein.

23 21. Interval admits the allegations in ¶ 95 that an actual controversy exists between Apple and
24 Interval as to whether Apple infringes the '314 patent.

25 22. Interval admits the allegations in ¶ 96 that by asserting its Counterclaims, Apple seeks a
26 declaration that it has not infringed the '314 patent.

1 **FOURTH COUNTERCLAIM**

2 **(Declaratory Judgment of Non-Infringement of the '682 Patent)**

3 23. Interval incorporates by reference its responses to paragraphs 76 to 96 as if fully set forth
4 herein.

5 24. Interval admits the allegations in ¶ 98 that an actual controversy exists between Apple and
6 Interval as to whether Apple infringes the '682 patent.

7 25. Interval admits the allegations in ¶ 99 that by asserting its Counterclaims, Apple seeks a
8 declaration that it has not infringed the '682 patent.

9 **FIFTH COUNTERCLAIM**

10 **(Declaratory Judgment of Invalidity of the '507 Patent)**

11 26. Interval incorporates by reference its responses to paragraphs 76 to 99 as if fully set forth
12 herein.

13 27. Interval admits the allegations in ¶ 101 that an actual controversy exists between Apple
14 and Interval as to whether the '507 patent is valid.

15 28. Interval admits the allegations in ¶ 102 that by asserting its Counterclaims, Apple seeks a
16 declaration that the '507 patent is invalid.

17 **SIXTH COUNTERCLAIM**

18 **(Declaratory Judgment of Invalidity of the '652 Patent)**

19 29. Interval incorporates by reference its responses to paragraphs 76 to 102 as if fully set forth
20 herein.

21 30. Interval admits the allegations in ¶ 104 that an actual controversy exists between Apple
22 and Interval as to whether the '652 patent is valid.

23 31. Interval admits the allegations in ¶ 105 that by asserting its Counterclaims, Apple seeks a
24 declaration that the '652 patent is invalid.

1 **SEVENTH COUNTERCLAIM**

2 **(Declaratory Judgment of Invalidity of the '314 Patent)**

3 32. Interval incorporates by reference its responses to paragraphs 76 to 105 as if fully set forth
4 herein.

5 33. Interval admits the allegations in ¶ 107 that an actual controversy exists between Apple
6 and Interval as to whether the '314 patent is valid.

7 34. Interval admits the allegations in ¶ 108 that by asserting its Counterclaims, Apple seeks a
8 declaration that the '314 patent is invalid.

9 **EIGHTH COUNTERCLAIM**

10 **(Declaratory Judgment of Invalidity of the '682 Patent)**

11 35. Interval incorporates by reference its responses to paragraphs 76 to 108 as if fully set forth
12 herein.

13 36. Interval admits the allegations in ¶ 110 that an actual controversy exists between Apple
14 and Interval as to whether the '682 patent is valid.

15 37. Interval admits the allegations in ¶ 111 that by asserting its Counterclaims, Apple seeks a
16 declaration that the '682 patent is invalid.

17 **DEMAND FOR JURY TRIAL**

18 38. This paragraph sets forth Apple's request for a jury trial, to which no response is required.

19 **PRAYER FOR RELIEF**

20 39. In response to Apple's Prayer for Relief, Interval denies that Apple is entitled to relief of
21 any kind.

22 **REQUEST FOR RELIEF**

23 40. WHEREFORE, Interval respectfully requests judgment of the Court against Apple as
24 follows:

- 25 (a) Dismissal of Apple's counterclaims with prejudice;
- 26 (b) Declaration that Apple has infringed, directly and/or indirectly, U.S. Patent Nos.
27 6,263,507; 6,757,682; 6,034,652; and 6,788,314;

1 (c) Awarding the damages arising out of Apple's infringement of U.S. Patent Nos.
2 6,263,507; 6,757,682; 6,034,652; and 6,788,314, to Interval, together with prejudgment and post-
3 judgment interest, in an amount according to proof;

4 (d) Permanently enjoining Apple and its respective officers, agents, employees, and
5 those acting in privity with them, from further infringement, including contributory infringement
6 and/or inducing infringement, of U.S. Patent Nos. 6,263,507, 6,034,652, 6,788,314, and
7 6,757,682, or in the alternative, awarding a royalty for post judgment infringement;

8 (e) Awarding attorney's fees pursuant to 35 U.S.C. § 285 or as otherwise permitted by
9 law; and

10 (f) Awarding such other costs and further relief as the Court may deem just and
11 proper.

12
13 Dated: February 7, 2011

/s/ Matthew R. Berry

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CERTIFICATE OF SERVICE

I hereby certify that on February 7, 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 the following counsel of record:

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