

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
FACEBOOK INC’S COUNTERCLAIMS**

Plaintiff Interval Licensing LLC (“Interval”), by and through its attorneys, files this Answer to the counterclaims of Defendant and Counterclaimant Facebook Inc.’s (“Facebook”) 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.

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Affirmative Defenses

First Affirmative Defense: Non-Infringement

- 2. Interval denies the allegations in ¶ 1.
- 3. Interval denies the allegations in ¶ 2.

Second Affirmative Defense: Invalidity

- 4. Interval denies the allegations in ¶ 3.
- 5. Interval denies the allegations in ¶ 4.

Third Affirmative Defense: Failure to State a Claim

- 6. Interval denies the allegations in ¶ 5.

Fourth Affirmative Defense: No Injunctive Relief

- 7. Interval denies the allegations in ¶ 6.

Fifth Affirmative Defense: Failure to Mark

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

Sixth Affirmative Defense: Prosecution History Estoppel

- 9. Interval denies the allegations in ¶ 8.
- 10. Interval denies the allegations in ¶ 9.

Seventh Affirmative Defense: Improper Joinder

- 11. Paragraph 10 contains legal conclusions that require no response. To the extent a response is required, Interval denies the allegations in ¶ 10.

Eighth Affirmative Defense: Preclusion of Costs

- 12. Paragraph 11 contains legal conclusions that require no response. To the extent a response is required, Interval denies the allegations in ¶ 11.

Other Affirmative Defenses

- 13. Paragraph 12 does not call for a response. If a response is warranted, Interval denies the allegations in ¶ 12.

1 **COUNTERCLAIMS**

2 **The Parties**

3 14. Interval is without sufficient information to admit or deny the allegations made in ¶ 13,
4 and therefore denies those allegations.

5 15. Interval admits the allegations in ¶ 14.

6 **Jurisdiction and Venue**

7 16. Interval admits that ¶ 15 contains Facebook’s characterization of its counterclaims.
8 Interval admits the allegations in ¶ 15 that this Court has subject matter jurisdiction.

9 17. Interval admits the allegations in ¶ 16 that the Court has personal jurisdiction over Interval
10 and that venue is also proper in this district. Interval denies all other allegations in ¶ 16.

11 **Actual Controversy**

12 18. Interval admits the allegations in ¶ 17.

13 19. Interval admits the allegations in ¶ 18.

14 20. Interval admits the allegations in ¶ 19 that an actual controversy exists between Facebook
15 and Interval. It also admits that Facebook seeks a declaration that it does not infringe the ‘507
16 and ‘682 patents, that certain claims of the ‘507 and ‘682 patents are invalid, and that Interval’s
17 claims under the ‘507 and ‘682 patents are unenforceable.

18 **COUNT I**

19 **(Declaratory Judgment of Non-Infringement of the ‘507 Patent)**

20 21. Interval incorporates by reference its responses to all preceding paragraphs of this Answer
21 as if fully set forth herein.

22 22. Interval admits that ¶ 21 describes what Facebook is seeking by way of its counterclaims.
23 Interval denies all other allegations in ¶ 21.

1 **COUNT II**

2 **(Declaratory Judgment of Invalidity and/or Unenforceability of Claims 20-24, 27-28, 31, 34,**
3 **37, 63-67, 70-71, 74, 77, and 80 of the '507 Patent)**

4 23. Interval incorporates by reference its responses to all preceding paragraphs of this Answer
5 as if fully set forth herein.

6 24. Interval denies the allegations in ¶ 23.

7 **COUNT III**

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

9 25. Interval incorporates by reference its responses to all preceding paragraphs of this Answer
10 as if fully set forth herein.

11 26. Interval admits that ¶ 25 describes what Facebook is seeking by way of its counterclaims.
12 Interval denies all other allegations in ¶ 25.

13 **COUNT IV**

14 **(Declaratory Judgment of Invalidity and/or Unenforceability of Claims 1-9, 11-13, 16-17,**
15 **and 20 of the '682 Patent)**

16 27. Interval incorporates by reference its responses to all preceding paragraphs of this Answer
17 as if fully set forth herein.

18 28. Interval denies the allegations in ¶ 27.

19 **Jury Demand**

20 29. This paragraph sets forth Facebook's request for a jury trial, to which no response is
21 required.

22 **Relief Requested by Facebook**

23 30. In response to Facebook's Relief Requested, Interval denies that Facebook is entitled to
24 relief of any kind.

25 **REQUEST FOR RELIEF**

26 31. WHEREFORE, Interval respectfully requests judgment of the Court against Facebook as
27 follows:

- 1 (a) Dismissal of Facebook's counterclaims with prejudice;
- 2 (b) Declaration that Facebook has infringed, directly and/or indirectly, U.S. Patent
3 Nos. 6,263,507 and 6,757,682;
- 4 (c) Awarding the damages arising out of Facebook's infringement of U.S. Patent Nos.
5 6,263,507 and 6,757,682, to Interval, together with prejudgment and post-judgment interest, in an
6 amount according to proof;
- 7 (d) Permanently enjoining Facebook and its respective officers, agents, employees,
8 and those acting in privity with them, from further infringement, including contributory
9 infringement and/or inducing infringement, of U.S. Patent Nos. 6,263,507 and 6,757,682, or in
10 the alternative, awarding a royalty for post judgment infringement;
- 11 (e) Awarding attorney's fees pursuant to 35 U.S.C. § 285 or as otherwise permitted by
12 law; and
- 13 (f) Awarding such other costs and further relief as the Court may deem just and
14 proper.

15
16 Dated: February 7, 2011

/s/ Matthew R. Berry

17 Justin A. Nelson
18 WA Bar No. 31864
19 E-Mail: jnelson@susmangodfrey.com
20 Edgar G. Sargent
21 WA Bar No. 28283
22 E-Mail: esargent@susmangodfrey.com
23 Matthew R. Berry
24 WA Bar No. 37364
25 E-Mail: mberry@susmangodfrey.com
26 SUSMAN GODFREY L.L.P.
27 1201 Third Ave, Suite 3800
28 Seattle, WA 98101
Telephone: (206) 516-3880
Facsimile: (206) 516-3883

Max L. Tribble, Jr.
E-Mail: mtribble@susmangodfrey.com
SUSMAN GODFREY L.L.P.
1000 Louisiana Street, Suite 5100
Houston, Texas 77002

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Telephone: (713) 651-9366
Facsimile: (713) 654-6666

Michael F. Heim
E-mail: mheim@hpcllp.com
Eric J. Enger
E-mail: eenger@hpcllp.com
Nathan J. Davis
E-mail: ndavis@hpcllp.com
HEIM, PAYNE & CHORUSH, L.L.P.
600 Travis, Suite 6710
Houston, Texas 77002
Telephone: (713) 221-2000
Facsimile: (713) 221-2021

Attorneys for INTERVAL LICENSING LLC

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:

Attorneys for AOL, Inc.

Aneelah Afzali	aneelah.afzali@stokeslaw.com
Cortney Alexander	cortney.alexander@finnegan.com
Robert Burns	robert.burns@finnegan.com
Elliot Cook	elliott.cook@finnegan.com
Gerald Ivey	gerald.ivey@finnegan.com
Scott Johnson	scott.johnson@stokeslaw.com
Shannon Jost	shannon.jost@stokeslaw.com

Attorneys for Apple, Inc.

David Almeling	dalmeling@omm.com
Brian Berliner	bberliner@omm.com
George Riley	griley@omm.com
Jeremy Roller	jroller@yarmuth.com
Scott Wilsdon	wilsdon@yarmuth.com
Neil Yang	nyang@omm.com

Attorneys for eBay, Inc., Netflix, Inc., and Staples, Inc.

Chris Carraway	chris.carraway@klarquist.com
Kristin Cleveland	Kristin.cleveland@klarquist.com
Klaus Hamm	Klaus.hamm@klarquist.com
Arthur Harrigan, Jr.	arthurh@dhl.com
John Vandenberg	john.vandenberg@klarquist.com
Christopher Wion	chrisw@dhl.com

Attorneys for Facebook, Inc.

Christen Dubois	cdubois@cooley.com
Heidi Keefe	hkeefe@cooley.com
Michael Rhodes	mrhodes@cooley.com
Elizabeth Stameshkin	lstameshkin@cooley.com
Mark Weinstein	mweinstein@cooley.com

Attorneys for Google, Inc. and YouTube, LLC

Aneelah Afzali	aneelah.afzali@stokeslaw.com
Aaron Chase	achase@whitecase.com
Dimitrios Drivas	ddrivas@whitecase.com
John Handy	jhandy@whitecase.com
Warren Heit	wheit@whitecase.com
Scott Johnson	scott.johnson@stokeslaw.com
Shannon Jost	shannon.jost@stokeslaw.com

1 Kevin McGann kmcgann@whitecase.com
2 Wendi Schepler wschepler@whitecase.com

3 **Attorneys for Office Depot, Inc.**

4 Chris Carraway chris.carraway@klarquist.com
5 Kristin Cleveland Kristin.cleveland@klarquist.com
6 Klaus Hamm Klaus.hamm@klarquist.com
7 Arthur Harrigan, Jr. arthurh@dhl.com
8 John Vandenberg john.vandenberg@klarquist.com
9 Christopher Wion chrisw@dhl.com

10 **Attorneys for OfficeMax, Inc.**

11 Kevin Baumgardner kbaumgardner@correronin.com
12 Steven Fogg sfogg@correronin.com
13 John Letchinger letchinger@wildman.com
14 Douglas Rupert rupert@wildman.com

15 **Attorneys for Yahoo! Inc.**

16 Francis Ho fho@mof.com
17 Richard S.J. Hung rhung@mof.com
18 Michael Jacobs mjacobs@mof.com
19 Matthew Kreeger mkreeger@mof.com
20 Dario Machleidt dmachleidt@flhlaw.com
21 Eric Ow eow@mof.com
22 Mark Walters mwalters@flhlaw.com

23
24
25
26
27
28 By: /s/ Bianca Nealious
Bianca Nealious