

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
STAPLES INC.’S COUNTERCLAIMS**

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

Second Affirmative Defense: Invalidity

3. Interval denies the allegations in ¶ 2.

Third Affirmative Defense: Failure to State a Claim

4. Interval denies the allegations in ¶ 3.

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

5. Interval denies the allegations in ¶ 4.

Fifth Affirmative Defense: Dedication to the Public

6. Interval denies the allegations in ¶ 5.

Sixth Affirmative Defense: Equitable Defenses

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

Seventh Affirmative Defense: Lack of Standing

8. Interval denies the allegations in ¶ 7.

Eighth Affirmative Defense: Failure to Mitigate Damages

9. Interval denies the allegations in ¶ 8.

Ninth Affirmative Defense: Sections 284-288

10. Paragraph 9 contains legal conclusions that require no response. To the extent a response is required, Interval denies the allegations in ¶ 9.

11. Interval denies the allegations in ¶ 10. Interval, through its sister corporation, Vulcan Inc., sent a letter to Staples prior to the commencement of this action informing Staples that Vulcan Inc. and its affiliated companies had patents that may be of interest to Staples, and invited Staples to contact Vulcan’s intellectual property counsel to discuss further.

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

1 **Tenth Affirmative Defense: Reverse Doctrine of Equivalents**

2 13. Interval denies the allegations in ¶ 12.

3 **Eleventh Affirmative Defense: Prosecution History Estoppel**

4 14. Paragraph 13 contains legal conclusions that require no response. To the extent a
5 response is required, Interval denies the allegations in ¶ 13.

6 **Twelfth Affirmative Defense: No Entitlement to an Injunction**

7 15. Interval admits the allegations in ¶ 14.

8 16. Interval denies the allegations in ¶ 15.

9 17. Interval denies the allegations in ¶ 16.

10 18. Interval denies the allegations in ¶ 17.

11 19. Interval denies the allegations in ¶ 18.

12 20. Interval denies the allegations in ¶ 19.

13 **Thirteenth Affirmative Defense: Indispensable Parties**

14 21. Interval denies the allegations in ¶ 20.

15 **PRAYER FOR RELIEF**

16 22. In response to Staples's Prayer for Relief, Interval denies that Staples is entitled to relief
17 of any kind.

18 **DEMAND FOR JURY TRIAL**

19 23. This paragraph sets forth Staples's request for a jury trial, to which no response is
20 required.

21 **COUNTERCLAIMS FOR DECLARATORY JUDGMENT**

22 **Parties**

23 24. Interval is without sufficient information to admit or deny the allegations made in ¶ 1, and
24 therefore denies those allegations.

25 25. Interval admits the allegations in ¶ 2.

1 **JURISDICTION**

2 26. Interval admits the allegations in ¶ 3 that Staples’s counterclaims constitute an action
3 seeking a declaration of non-infringement and invalidity of the ‘507 and ‘682 patents and that this
4 Court has jurisdiction over the counterclaims.

5 27. Interval admits the allegations in ¶ 4.

6 28. Interval admits the allegations in ¶ 5 that an actual case and controversy exists between
7 Interval and Staples relating to the ‘507 and ‘682 patents.

8 **COUNT ONE**

9 **(Declaration of Non-Infringement of the ‘507 Patent)**

10 29. Interval incorporates by reference its responses to paragraphs 1-5 as if fully set forth
11 herein.

12 30. Interval denies the allegations in ¶ 7.

13 31. Interval denies the allegations in ¶ 8.

14 **COUNT TWO**

15 **(Declaration of Non-Infringement of the ‘682 Patent)**

16 32. Interval incorporates by reference its responses to paragraphs 1-8 as if fully set forth
17 herein.

18 33. Interval denies the allegations in ¶ 10.

19 34. Interval denies the allegations in ¶ 11.

20 **COUNT THREE**

21 **(Declaration of Invalidity of the ‘507 Patent)**

22 35. Interval incorporates by reference its responses to paragraphs 1-11 as if fully set forth
23 herein.

24 36. Interval denies the allegations in ¶ 13.

25 37. Interval denies the allegations in ¶ 14.

1 **COUNT FOUR**

2 **(Declaration of Invalidity of the '682 Patent)**

3 38. Interval incorporates by reference its responses to paragraphs 1-14 as if fully set forth
4 herein.

5 39. Interval denies the allegations in ¶ 16.

6 40. Interval denies the allegations in ¶ 17.

7 **DEMAND FOR JURY TRIAL**

8 41. This paragraph sets forth Staples's request for a jury trial, to which no response is
9 required.

10 **PRAYER FOR RELIEF**

11 42. In response to Staples's Prayer for Relief, Interval denies that Staples is entitled to relief
12 of any kind.

13 **REQUEST FOR RELIEF**

14 43. WHEREFORE, Interval respectfully requests judgment of the Court against Staples as
15 follows:

16 (a) Dismissal of Staples's counterclaims with prejudice;

17 (b) Declaration that Staples has infringed U.S. Patent Nos. 6,263,507 and 6,757,682;

18 (c) Awarding the damages arising out of Staples's infringement of U.S. Patent Nos.
19 6,263,507 and 6,757,682, to Interval, together with prejudgment and post-judgment interest, in an
20 amount according to proof;

21 (d) Permanently enjoining Staples and its respective officers, agents, employees, and
22 those acting in privity with them, from further infringement of U.S. Patent Nos. 6,263,507 and
23 6,757,682, or in the alternative, awarding a royalty for post judgment infringement;

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

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

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2 Dated: February 7, 2011

/s/ Matthew R. Berry

3 Justin A. Nelson
4 WA Bar No. 31864
5 E-Mail: jnelson@susmangodfrey.com
6 Edgar G. Sargent
7 WA Bar No. 28283
8 E-Mail: esargent@susmangodfrey.com
9 Matthew R. Berry
10 WA Bar No. 37364
11 E-Mail: mberry@susmangodfrey.com
12 SUSMAN GODFREY L.L.P.
13 1201 Third Ave, Suite 3800
14 Seattle, WA 98101
15 Telephone: (206) 516-3880
16 Facsimile: (206) 516-3883

17 Max L. Tribble, Jr.
18 E-Mail: mtribble@susmangodfrey.com
19 SUSMAN GODFREY L.L.P.
20 1000 Louisiana Street, Suite 5100
21 Houston, Texas 77002
22 Telephone: (713) 651-9366
23 Facsimile: (713) 654-6666

24 Michael F. Heim
25 E-mail: mheim@hpcllp.com
26 Eric J. Enger
27 E-mail: eenger@hpcllp.com
28 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

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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:

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