

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
YAHOO INC.’S COUNTERCLAIMS**

Plaintiff Interval Licensing LLC (“Interval”), by and through its attorneys, files this Answer to the counterclaims of Defendant and Counterclaimant Yahoo Inc. (“Yahoo”) 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 1-76 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

2. Paragraph 77 does not contain any allegations to which a response is required. To the extent a response is warranted, Interval denies the allegations in ¶ 77.

First Affirmative Defense: Non-Infringement

3. Interval denies the allegations in ¶ 78.

Second Affirmative Defense: Invalidity

4. Interval denies the allegations in ¶ 79.

Third Affirmative Defense: Estoppel

5. Interval denies the allegations in ¶ 80.

Fourth Affirmative Defense: Adequate Remedy at Law

6. Interval denies the allegations in ¶ 81.

Fifth Affirmative Defense: Limitation on Recovery of Costs

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

Sixth Affirmative Defense: Failure to Mark

8. Paragraph 83 contains legal conclusions that require no response. To the extent a response is required, Interval denies the allegations in ¶ 83.

Seventh Affirmative Defense: Laches

9. Interval denies the allegations in ¶ 84.

Eighth Affirmative Defense: Unclean Hands

10. Paragraph 85 contains legal conclusions that require no response. To the extent a response is required, Interval denies the allegations in ¶ 85.

Ninth Affirmative Defense: Improper Joinder

11. Paragraph 86 contains legal conclusions that require no response. To the extent a response is required, Interval denies the allegations in ¶ 86.

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Tenth Affirmative Defense: Substantial Non-infringing Use

12. Paragraph 87 contains legal conclusions that require no response. To the extent a response is required, Interval denies the allegations in ¶ 87.

Eleventh Affirmative Defense: Failure to State a Claim

13. Interval denies the allegations in ¶ 88.

Additional Defenses

14. Paragraph 89 does not contain any allegations to which a response is required. To the extent a response is warranted, Interval denies the allegations in ¶ 89.

COUNTERCLAIMS

(Declaratory Judgment as to the ‘507, ‘652, ‘314, and ‘682 Patents)

15. Interval incorporates by reference its responses to paragraphs 77 to 89 as if fully set forth herein.

16. Interval is without sufficient information to admit or deny the allegations made in ¶ 91, and therefore denies those allegations.

17. Interval admits the allegations in ¶ 92.

18. Interval admits the allegations in ¶ 93 that a justiciable controversy exists between Interval and Yahoo as to whether Yahoo has infringed the ‘507, ‘652, ‘314, and ‘682 patents.

19. Interval admits the allegation in ¶ 94 that a judicial declaration is appropriate at this time. Interval denies all other allegations in ¶ 94.

20. Interval admits the allegation in ¶ 95 that venue is proper in this judicial district. Interval denies all other allegations in ¶ 95.

21. Interval admits the allegations in ¶ 96.

COUNT ONE

(Declaratory Judgment of Non-Infringement of the ‘507, ‘652, ‘314, and ‘682 Patents)

22. Interval incorporates by reference its responses to paragraphs 77 to 96 as if fully set forth herein.

23. Interval denies the allegations in ¶ 98.

1 24. Interval denies the allegations in ¶ 99.

2 **COUNT TWO**

3 **(Declaratory Judgment of Invalidity and/or Unenforceability of the ‘507, ‘652, ‘314, and**
4 **‘682 Patents)**

5 25. Interval incorporates by reference its responses to paragraphs 77 to 99 as if fully set forth
6 herein.

7 26. Interval denies the allegations in ¶ 101.

8 **PRAYER FOR RELIEF**

9 27. In response to Yahoo’s Prayer for Relief, Interval denies that Yahoo is entitled to relief of
10 any kind.

11 **DEMAND FOR JURY TRIAL**

12 28. This paragraph sets forth Yahoo’s request for a jury trial, to which no response is required.

13 **REQUEST FOR RELIEF**

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

16 (a) Dismissal of Yahoo’s counterclaims with prejudice;

17 (b) Declaration that Yahoo has infringed, directly and/or indirectly, U.S. Patent Nos.
18 6,263,507; 6,757,682; 6,034,652; and 6,788,314;

19 (c) Awarding the damages arising out of Yahoo’s infringement of U.S. Patent Nos.
20 6,263,507; 6,757,682; 6,034,652; and 6,788,314, to Interval, together with prejudgment and post-
21 judgment interest, in an amount according to proof;

22 (d) Permanently enjoining Yahoo and its respective officers, agents, employees, and
23 those acting in privity with them, from further infringement, including contributory infringement
24 and/or inducing infringement, of U.S. Patent Nos. 6,263,507, 6,034,652, 6,788,314, and
25 6,757,682, or in the alternative, awarding a royalty for post judgment infringement;

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

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

3
4 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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