1		Hon. Marsha J. Pechman
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8 9	UNITED STATES I WESTERN DISTRICT	
10	INTERVAL LICENSING LLC,	
11	Plaintiff,	No. 2:10-CV-01385-MJP
12	v.	DEFENDANT APPLE INC.'S MOTION TO DISMISS FOR FAILURE TO
13	AOL, INC., et al.,	STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED
14		PURSUANT TO FED. R. CIV. P. 12(B)(6)
15		NOTE ON MOTION CALENDAR:
16		November 12, 2010
17		
18	Pursuant to Fed. R. Civ. P. 12(b)(6), D	Defendant Apple Inc. ("Apple") respectfully
19	moves the Court to dismiss Interval Licensing	g LLC's ("Interval") Complaint for Patent
20	Infringement ("Complaint"). Interval has fail	ed to state a claim upon which relief can be
21	granted for the reasons set forth in Google Inc	e. and YouTube LLC's (collectively,
22	"Google") joint Motion To Dismiss For Failu	re To State A Claim Upon Which Relief Can
23	Be Granted Pursuant To Fed. R. Civ. P. 12(b)	(6). (Docket No. 62.)
24	As summarized in Google's motion, In	nterval repeats the same, generic, conclusory
25	allegations as the putative basis for Interval's infringement claims against each of the	
26	eleven defendants. These allegations fail to c	omply with the pleading requirements set

1	forth in Ashcroft v. Iqbal, 129 S. Ct. 1937 (2009), and Bell Atlantic Corp. v. Twombly, 550
2	U.S. 544 (2007), because the allegations fail to plead sufficient facts to show that Interval
3	has a plausible claim against Apple and the other defendants. In particular, Interval has
4	failed to identify:
5	• the specific Apple products and/or services, if any, that allegedly infringe;
6 7	• the alleged basis for that infringement (i.e. direct infringement under 35 U.S.C. § 271(a), inducing infringement under § 271(b), and/or contributory infringement under § 271(c)); and
8	<ul> <li>the alleged factual support necessary to satisfy each material element of each of the three potential bases of infringement.</li> </ul>
10	In short, Interval has sued eleven major corporations and made the same bald assertions that
11	each defendant infringes 197 claims in four patents. As the U.S. Supreme Court noted in
12	Twombly, it is in this type of situation in which courts should use their "power to insist
13	upon some specificity in pleading before allowing a potentially massive factual controversy
14	to proceed." 550 U.S. at 558 (quotation omitted).
15	In the interest of expeditiously disposing of this case, Apple hereby joins in
16	Google's motion and incorporates by reference the authority and arguments presented
17	therein. Accordingly, based on that authority and those arguments as well as the analysis in
18	this motion, Apple requests that the Court dismiss Interval's Complaint against Apple.
19	Apple expressly reserves the right to file its own brief in reply to any opposition
20	filed by Interval.
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1	DATED: October 21, 2010	
2	DATED: October 21, 2010.	O'MELVENY & MYERS LLP
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1	CERTIFICA	TE OF SERVICE
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3	the Clerk of the Court using the CM/ECF system which will send notification of such filing	
4	to:	
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Dated this 21st day of October, 2010 at Seattle, Washington. <u>s/ Colette D. Saunders</u> Colette D. Saunders Legal Assistant