

Hon. Marsha J. Pechman

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

INTERVAL LICENSING LLC,

Plaintiff,

v.

AOL, INC., et al.,

Defendants.

No. 2:10-CV-01385-MJP

DEFENDANT APPLE INC.'S MOTION
TO DISMISS FOR FAILURE TO
STATE A CLAIM UPON WHICH
RELIEF CAN BE GRANTED
PURSUANT TO FED. R. CIV. P.
12(B)(6)

NOTE ON MOTION CALENDAR:
November 12, 2010

Pursuant to Fed. R. Civ. P. 12(b)(6), Defendant Apple Inc. ("Apple") respectfully moves the Court to dismiss Interval Licensing LLC's ("Interval") Complaint for Patent Infringement ("Complaint"). Interval has failed to state a claim upon which relief can be granted for the reasons set forth in Google Inc. and YouTube LLC's (collectively, "Google") joint Motion To Dismiss For Failure To State A Claim Upon Which Relief Can Be Granted Pursuant To Fed. R. Civ. P. 12(b)(6). (Docket No. 62.)

As summarized in Google's motion, Interval repeats the same, generic, conclusory allegations as the putative basis for Interval's infringement claims against each of the eleven defendants. These allegations fail to comply 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 • the alleged basis for that infringement (i.e. direct infringement under 35
7 U.S.C. § 271(a), inducing infringement under § 271(b), and/or contributory
infringement under § 271(c)); and
- 8 • the alleged factual support necessary to satisfy each material element of
9 each of the three potential bases of infringement.

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.

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

1 DATED: October 21, 2010.

O'MELVENY & MYERS LLP

2
3 By: /s/ Brian M. Berliner

Brian M. Berliner, CA Bar No. 156732 (*pro hac vice*)

4 Neil L. Yang, CA Bar No. 262719 (*pro hac vice*)

400 South Hope Street

5 Los Angeles, CA 90071

Telephone: 213.430.6000

6 Facsimile: 213.430.6407

Email: bberliner@omm.com; nyang@omm.com

7
8 George A. Riley, CA Bar No. 118304 (*pro hac vice*)

David S. Almeling, CA Bar No. 235449 (*pro hac vice*)

Two Embarcadero Center, 28th Floor

9 San Francisco, CA 94111-3823

Telephone: 415.984.8700

10 Facsimile: 415.984.8701

Email: griley@omm.com; dalmeling@omm.com

11
12 YARMUTH WILSDON CALFO PLLC

13
14 By: /s/ Jeremy E. Roller

Scott T. Wilsdon, WSBA No. 20608

Jeremy E. Roller, WSBA No. 32021

15 818 Stewart Street, Suite 1400

Seattle, WA 98101

16 Telephone: 206.516.3800

Facsimile: 206.516.3888

17 Email: wilsdon@yarmuth.com; jroller@yarmuth.com

18 *Attorneys for Defendant Apple Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to:

Attorneys for Plaintiff

Justin A. Nelson
Email: jnelson@susmangodfrey.com

Attorney for Plaintiff

Matthew R. Berry
Email: mberry@susmangodfrey.com

Attorney for Plaintiff

Eric J. Enger
Email: eenger@hpcllp.com

Attorney for Plaintiff

Michael F. Heim
Email: mheim@hpcllp.com

Attorney for Plaintiff

Nathan J. Davis
Email: ndavis@hpcllp.com

Attorney for Plaintiff

Max L. Tribble
Email: mtribble@susmangodfrey.com

**Attorney for eBay, Netflix, Office Depot,
& Staples**

J. Christopher Caraway
Email: chris.caraway@klarquist.com

**Attorney for eBay, Netflix, Office Depot,
& Staples**

John D. Vandenberg
Email: john.vandenberg@klarquist.com

Attorney for Google & YouTube

Aaron Chase
Email: aaron.chase@whitecase.com

Attorney for Google & YouTube

Dimitrios T. Drivas
Email: ddrivas@whitecase.com

Attorney for Google & YouTube

John Handy
Email: jhandy@whitecase.com

Attorney for Google & YouTube

Kevin X. McGann
Email: kmcgann@whitecase.com

Attorney for Google & YouTube

Aneelah Afzali
Email: aneelah.afzali@stokeslaw.com

Attorney for Google & YouTube

Scott A. W. Johnson
Email: sawj@stokeslaw.com

Attorney for Office Depot

Edward J. Bennett
Email: ebennett@wc.com

Attorney for Office Depot

Michael D. Hunsinger
Email: mike_hunsingerlawyers@yahoo.com

1 I declare under penalty of perjury under the laws of the State of Washington that the
2 foregoing is true and correct.

3 Dated this 21st day of October, 2010 at Seattle, Washington.

4
5 s/ Colette D. Saunders

6 Colette D. Saunders

7 Legal Assistant
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26