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13 **Attorneys for Defendant Apple Inc.**

14 **UNITED STATES DISTRICT COURT**
 15 **DISTRICT OF ARIZONA**

16 **Cygnus Systems, Inc.,**
 17 **Plaintiff(s),**
 18 **v.**
 19 **Microsoft Corporation, Apple Inc.,**
 20 **and Google, Inc.,**
 21 **Defendant(s).**

Case No. CV-08-2337-PHX-NVW

JURY TRIAL DEMANDED

**DEFENDANT APPLE INC.’S ANSWER
 AND COUNTERCLAIMS**

22
 23 Defendant Apple Inc. (“Apple”) responds to the First Amended Complaint for Patent
 24 Infringement (Docket No. 6) (hereinafter, “First Amended Complaint”) filed by Plaintiff Cygnus
 25 Systems, Inc. (“Cygnus”) as follows:

26 1. Apple admits that the First Amended Complaint alleges acts of infringement of a
 27 United States patent and that this Court has subject matter jurisdiction over the claims for patent
 28

1 of the First Amended Complaint and on that basis denies them.

2 11. Apple denies the allegations of Paragraph 11 of the First Amended Complaint with
3 respect to Apple. Apple lacks information sufficient to admit or deny the allegations of Paragraph
4 11 of the First Amended Complaint with respect to the other Defendants and on that basis denies
5 them.

6
7 **JURY DEMAND**

8 12. Apple acknowledges and joins Cygnus' request for a trial by jury on all issues triable
9 of right by a jury that are raised for determination by the First Amended Complaint or that may be
10 raised by a counterclaim to be filed herein.

11 **GENERAL DENIAL**

12 13. Except as specifically admitted, Apple denies each and every allegation contained in
13 Paragraphs 1–11 of the First Amended Complaint.

14
15 **PRAYER FOR RELIEF**

16 14. Apple denies that Cygnus is entitled to any of the relief identified in the request for
17 relief, including the wherefore recital and paragraphs (A) through (E) on pages 3 and 4 of the First
18 Amended Complaint.

19 **AFFIRMATIVE AND OTHER DEFENSES**

20 **First Defense: Noninfringement**

21 15. Apple does not infringe and has not infringed, willfully or otherwise, either directly
22 or indirectly, and does not and has not induced the infringement of any valid claim of the '850
23 patent.

24
25 **Second Defense: Invalidity**

26 16. The '850 patent is invalid for failure to comply with the requirements of 35 U.S.C.
27 §§ 101, 102, 103, and/or 112.

1 **Third Defense: Limitations on Damages**

2 17. Cygnus may not recover damages for any alleged infringement committed more than
3 six years prior to filing of its Complaint for Patent Infringement (Docket No. 1) (35 U.S.C. § 286),
4 and, to the extent Cygnus failed to comply with the notice provisions of 35 U.S.C. § 287, Cygnus
5 may not recover damages prior to the filing of its Complaint for Patent Infringement (Docket No.
6 1).

7
8 **Fourth Defense: Prosecution History Estoppel**

9 18. Cygnus is estopped from construing the claims of the ‘850 patent in such a way as
10 may cover any Apple product or process by reasons of statements made to the Patent Office during
11 the prosecution of the application that led to the issuance of the ‘850 patent.

12 **Fifth Defense: Patent Misuse**

13 19. On information and belief, the ‘850 patent is unenforceable under the doctrine of
14 patent misuse.
15

16 **Sixth Defense: Reserved Defenses**

17 20. Apple reserves all affirmative defenses under Rule 8(c) of the Federal Rules of Civil
18 Procedure, the Patent Laws of the United States, and any other defenses, at law or in equity, which
19 may now exist or in the future may be available based on discovery and further factual investigation
20 in this case.
21

22 **COUNTERCLAIMS**

23 Defendant/Counterclaim-Plaintiff Apple, for its counterclaims against
24 Plaintiff/Counterclaim-Defendant Cygnus, alleges as follows:

25 **The Parties**

26 21. Apple incorporates by reference paragraphs 1 through 20 of its Answer and
27 Counterclaims as though set forth fully herein.
28

1 Amended Complaint that it “has standing to sue for infringement of the ‘850 Patent.”

2 30. Cygnus has asserted that Apple infringes the ‘850 patent.

3 31. Apple has not infringed, and is not infringing, either directly or indirectly under 35
4 U.S.C. § 271, any valid claim of the ‘850 patent, either literally or under the doctrine of equivalents.

5 32. The claims of the ‘850 patent are invalid for failure to meet the conditions of
6 patentability of 35 U.S.C. § 101 et seq., including without limitation those of sections 102, 103,
7 and/or 112.

8 33. This case is exceptional and, pursuant to 35 U.S.C. § 285, Apple is entitled to an
9 award of attorneys’ fees.

10
11 **PRAYER FOR RELIEF**

12 WHEREFORE, Apple seeks the following relief:

13 A. A declaration that Apple has not infringed and is not infringing, directly or
14 indirectly, any claims of the ‘850 patent;

15 B. A declaration that the claims of the ‘850 patent are invalid;

16 C. A declaration that Cygnus and each of its officers, employees, agents, alter egos,
17 attorneys, and any persons in active concert or participation with them by restrained and enjoined
18 from further prosecuting or instituting any action against Apple claiming that the ‘850 patent is
19 infringed, valid, or enforceable, or from representing that Apple’s products or services, or that
20 others’ use thereof, infringe the ‘850 patent;

21 D. That the First Amended Complaint be dismissed with prejudice, that judgment be
22 entered in favor of Apple, and that Cygnus take nothing;

23 E. That Cygnus be required to pay Apple its costs of suit, expenses, and its attorneys
24 fees pursuant to 35 U.S.C. § 285 and all other applicable statutes, rules, and common law;

25 F. Such other and further relief as this Court may deem just and proper.
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2 Dated: March 2, 2009

Respectfully submitted,

/s/ David J. Healey

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**ATTORNEYS FOR DEFENDANT
APPLE INC.**

CERTIFICATE OF SERVICE

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The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of the foregoing document via the Court’s CM/ECF system on this the 2nd day of March, 2009.

/s/ David J. Healey
