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13 **Attorneys for Defendant Microsoft Corporation**

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

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

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

JURY TRIAL DEMANDED

**DEFENDANT MICROSOFT
 CORPORATION’S ANSWER AND
 COUNTERCLAIMS**

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

26 1. Microsoft 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 infringement under 28 U.S.C. § 1338(a).

1 2. Microsoft admits that United States Patent No. 7,346,850 (“the ‘850 patent”),
2 entitled “System and Method for Iconic Software Environment Management,” was issued by the
3 United States Patent and Trademark Office on March 18, 2008. Microsoft further admits that a true
4 and correct copy of the ‘850 patent was attached to the First Amended Complaint as Exhibit “A.”
5 Microsoft lacks information sufficient to admit or deny the remaining allegations in Paragraph 2 of
6 the First Amended Complaint and on that basis denies them.
7

8 3. Microsoft admits that it is a Washington corporation with its principal place of
9 business at One Microsoft Way, Redmond, Washington 98052. Microsoft admits that it transacts
10 business in this district, but Microsoft denies that it has committed any act of infringement of the
11 ‘850 patent.
12

13 4. Microsoft lacks information sufficient to admit or deny the allegations in Paragraph
14 4 of the First Amended Complaint and on that basis denies them.
15

16 5. Microsoft lacks information sufficient to admit or deny the allegations in Paragraph
17 5 of the First Amended Complaint and on that basis denies them.
18

19 6. Microsoft admits that venue is proper in this district but denies that this is a
20 convenient forum.
21

ALLEGATIONS OF PATENT INFRINGEMENT

22 7. Microsoft admits that the title of the '850 Patent is "System and Method for Iconic
23 Software Environment Management," but denies the remaining allegations in Paragraph 7 of the
24 First Amended Complaint.
25

26 8. Microsoft denies the allegations of Paragraph 8 of the First Amended Complaint.
27

28 9. Microsoft lacks information sufficient to admit or deny the allegations in Paragraph
9 of the First Amended Complaint and on that basis denies them.
29

 10. Microsoft lacks information sufficient to admit or deny the allegations in Paragraph
30

1 10 of the First Amended Complaint and on that basis denies them.

2 11. Microsoft denies the allegations of Paragraph 11 of the First Amended Complaint
3 with respect to Microsoft. Microsoft lacks information sufficient to admit or deny the allegations of
4 Paragraph 11 of the First Amended Complaint with respect to the other Defendants and on that
5 basis denies them.
6

7 **JURY DEMAND**

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

11 **GENERAL DENIAL**

12 13. Except as specifically admitted, Microsoft denies each and every allegation
13 contained in Paragraphs 1–11 of the First Amended Complaint.
14

15 **PRAYER FOR RELIEF**

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

19 **AFFIRMATIVE AND OTHER DEFENSES**

20 **First Defense: Noninfringement**

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

24 **Second Defense: Invalidity**

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

28 **Third Defense: Limitations on Damages**

1 **The Parties**

2 22. Microsoft incorporates by reference paragraphs 1 through 21 of its Answer and
3 Counterclaims as though set forth fully herein.

4 23. Microsoft is a Washington corporation with its principal place of business at One
5 Microsoft Way, Redmond, Washington 98052.

6
7 24. Upon information and belief, Cygnus is an Indiana corporation that has its principal
8 place of business at 40117 N. High Noon Way, Anthem, Arizona 85086.

9 **Jurisdiction and Venue**

10 25. This Court has subject-matter jurisdiction over Microsoft’s declaratory-judgment
11 counterclaims under 28 U.S.C. §§ 2201 and 2202. There is an actual controversy between
12 Microsoft and Cygnus regarding United States Patent No. 7,346,850 (“the ‘850 patent”) because
13 Cygnus asserted in its First Amended Complaint that Microsoft infringed the ‘850 patent.
14

15 26. An actual and justiciable controversy exists between Microsoft and Cygnus as to
16 whether the ‘850 patent is infringed, valid, and enforceable against Microsoft. Absent a declaration
17 of noninfringement, invalidity, or unenforceability, Cygnus will continue to wrongfully assert the
18 ‘850 patent against Microsoft, and thereby cause Microsoft irreparable injury and damage.

19 27. This Court has personal jurisdiction over Cygnus because Cygnus has voluntarily
20 appeared before this Court for all purposes. Moreover, this Court has personal jurisdiction over
21 Cygnus because Cygnus is located in Arizona with its principal place of business at 40117 N. High
22 Noon Way, Anthem, Arizona 85086.
23

24 28. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and 1400(b).

25 **First Counterclaim (Declaratory Judgment re: ‘850 patent)**

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

1 entered in favor of Microsoft, and that Cygnus take nothing;

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

4 F. Such other and further relief as this Court may deem just and proper.
5

6 Dated: March 2, 2009

Respectfully submitted,

7 /s/ David J. Healey

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19 **ATTORNEYS FOR DEFENDANT**
20 **MICROSOFT CORPORATION**

CERTIFICATE OF SERVICE

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

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