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5 Attorney for Plaintiff

6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA

8 Cygnus Systems, Inc.  
9 Plaintiff,

10 vs.

11 Microsoft Corporation; Apple Inc.; and Google  
12 Inc.,  
Defendants.

)  
) Case No. 2:08-CV-02337-NVW  
)  
)  
)

)  
) **JURY TRIAL DEMANDED**  
)

13  
14 **PLAINTIFF’S RESPONSE TO APPLE INC.’S**  
15 **ANSWER AND COUNTERCLAIMS**

16 Plaintiff Cygnus Systems, Inc. ("Cygnus") responds to the Counterclaims  
17 contained in the Defendant Apple Inc.’s Answer and Counterclaims filed on March 2,  
18 2009 by Defendant Apple Inc. ("Apple") as follows:

19  
20 **COUNTERCLAIM**

21 **The Parties**

22  
23 21. Apple incorporates by reference paragraphs 1 through 20 of its Answer and  
24 Counterclaims as though set forth fully herein.

25  
26 **Response:** Cygnus incorporates by reference paragraphs 1 through 20 of its Amended  
27 Complaint as though set forth fully herein.

1 22. Apple is a California corporation with its principal place of business at 1  
2 Infinite Loop, Cupertino, California 95014.

3 **Response:** Admitted.  
4

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

7 **Response:** Admitted.  
8

9 **Jurisdiction and Venue**

10 24. This Court has subject-matter jurisdiction over Apple’s declaratory-  
11 judgment counterclaims under 28 U.S.C. §§ 2201 and 2202. There is an actual  
12 controversy between Apple and Cygnus regarding United States Patent No. 7,346,850  
13 (“the ‘850 patent”) because Cygnus asserted in its First Amended Complaint that Apple  
14 infringed the ‘850 patent.  
15

16 **Response:** Admitted.  
17

18 25. An actual and justiciable controversy exists between Apple and Cygnus as  
19 to whether the ‘850 patent is infringed, valid, and enforceable against Apple. Absent a  
20 declaration of noninfringement, invalidity, or unenforceability, Cygnus will continue to  
21 wrongfully assert the ‘850 patent against Apple, and thereby cause Apple irreparable  
22 injury and damage.  
23

24 **Response:** Cygnus admits that an actual and justiciable controversy exists between  
25 Apple and Cygnus as to whether the ‘850 patent is infringed. Cygnus denies the  
26 remaining allegations in this paragraph.  
27  
28

1           26. This Court has personal jurisdiction over Cygnus because Cygnus has  
2 voluntarily appeared before this Court for all purposes. Moreover, this Court has  
3 personal jurisdiction over Cygnus because Cygnus is located in Arizona with its  
4 principal place of business at 40117 N. High Noon Way, Anthem, Arizona 85086.

5  
6 **Response:** Admitted.

7  
8           27. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and  
9 1400(b).

10 **Response:** Admitted.

11                           **First Counterclaim (Declaratory Judgment re: '850 patent)**

12  
13           28. Apple incorporates by reference paragraphs 1 through 27 of its Answer  
14 and Counterclaims as thought set forth fully herein.

15 **Response:** Cygnus incorporates by reference paragraphs 1 through 27 of its Response  
16 to Apple's Answer and Counterclaims as though set forth fully herein.

17  
18           29. Cygnus alleges in paragraph 2 of the First Amended complaint that it  
19 "owns" the '850 patent and that it "has the exclusive right to license and enforce the '850  
20 Patent and to collect all damages for infringement of such patent." Cygnus further  
21 alleges in paragraph 2 of the First Amended Complaint that it "has standing to sue for  
22 infringement of the '850 Patent."  
23

24 **Response:** Admitted.

25  
26           30. Cygnus has asserted that Apple infringes the '850 patent.

27 **Response:** Admitted.  
28

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

5 **Response:** Denied.

6 32. The claims of the '850 patent are invalid for failure to meet the conditions  
7 of patentability of 35 U.S.C. § 101 et seq., including without limitation those of sections  
8 102, 103, and/or 112.  
9

10 **Response:** Denied.

11 33. This case is exceptional and, pursuant to 35 U.S.C. § 285, Apple is  
12 entitled to an award of attorneys' fees.  
13

14 **Response:** Denied.

15 Cygnus denies that Apple is entitled to any of the relief requested in its Prayer  
16 for Relief.  
17

#### 18 **PLAINTIFF'S AFFIRMATIVE DEFENSES**

19 Cygnus asserts the following Affirmative Defenses against Apple's Counterclaims  
20 and reserves the right to further amend its responses as additional information becomes  
21 available.  
22

23 1. The claims of United States Patent No. 7,346,850 are valid, enforceable  
24 and infringed by Apple.  
25

26 2. Apple has also knowingly contributed to or induced the infringement of  
27 others by willfully and intentionally aiding, assisting and encouraging such infringement.  
28

3. Apple's infringement has been willful, deliberate and objectively reckless.

1 4. Cygnus adopts and incorporates herein all affirmative defenses available  
2 pursuant to Federal Rule of Civil Procedure 8 (or any applicable statute or regulation), to  
3 the extent the facts known at this time would make any of said defenses available or  
4 facts developed in the future would make same available.  
5

6 WHEREFORE, Cygnus requests that judgment be entered against Apple and in  
7 Cygnus's favor on the Counterclaims brought by Apple. Cygnus further requests that it  
8 be granted all of the relief requested in its Amended Complaint.  
9

10 **JURY DEMAND**

11 Cygnus demands a trial by jury on all issues properly triable to a jury.  
12

13 Date: 3/24/2009

Respectfully submitted

PETER C. WARNER, P.C.

By: /s/ Peter C. Warner  
Peter C. Warner

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1 **Certificate of Service**

2 The undersigned hereby certifies that a copy of the foregoing **PLAINTIFF’S**  
3 **RESPONSE TO APPLE INC.’S ANSWER AND COUNTERCLAIMS** was served  
4 via electronic mail and First-Class United States Mail on the following:  
5

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24 **Attorneys for Defendant Google Inc.**

25 on this 24<sup>th</sup> day of March 2009  
26

27 /s/ Lee F. Grossman  
28