

1 2. A valid and justiciable controversy has arisen and exists between Google
2 and plaintiff as to whether Google is infringing any of plaintiff's patent rights, including
3 the '850 patent, which plaintiff claims to have exclusively licensed.
4

5 **Response:** Cygnus admits that a valid and justiciable controversy has arisen and exists
6 between Google and Cygnus as to whether Google is infringing the '850 patent, which
7 plaintiff has the exclusive right to license and enforce. Cygnus denies the remaining
8 allegations in this paragraph.
9

10 3. The Court has subject matter jurisdiction over Google's counterclaims
11 pursuant to 28 U.S.C. §§ 2201-2202, 1331, and 1338.
12

13 **Response:** Admitted.
14

15 4. Google has not infringed, and is not infringing any of plaintiff's patent
16 rights, including any valid claim of the '850 patent, either literally or under the doctrine
17 of equivalents.
18

19 **Response:** Denied.
20

21 5. Google is entitled to a declaratory judgment that it has not infringed, and
22 is not infringing, plaintiff's patent rights, including any rights plaintiff may have in the
23 '850 patent.
24

25 **Response:** Denied.
26

27 6. A valid and justiciable controversy has arisen and exists between Google
28 and plaintiff as to whether the '850 patent is valid.

1 **Response:** Denied.

2
3 7. On information and belief, a reasonable opportunity for discovery will
4 establish that the '850 patent is invalid for failure to comply with the requirements of 35
5 U.S.C. §§ 102, 103 and/or 112.

6
7 **Response:** Denied.

8 8. Google is entitled to a declaratory judgment that the '850 patent is invalid.

9
10 **Response:** Denied.

11
12 Cygnus denies that Google is entitled to any of the relief requested in its Prayer
13 for Relief.

14
15 **PLAINTIFF'S AFFIRMATIVE DEFENSES**

16 Cygnus asserts the following Affirmative Defenses against Google's
17 Counterclaims and reserves the right to further amend its responses as additional
18 information becomes available.

19
20 1. The claims of United States Patent No. 7,346,850 are valid, enforceable
21 and infringed by Google.

22
23 2. Google has also knowingly contributed to or induced the infringement of
24 others by willfully and intentionally aiding, assisting and encouraging such infringement.

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

26
27 4. Cygnus adopts and incorporates herein all affirmative defenses available
28 pursuant to Federal Rule of Civil Procedure 8 (or any applicable statute or regulation), to

1 the extent the facts known at this time would make any of said defenses available or
2 facts developed in the future would make same available.

3
4 WHEREFORE, Cygnus requests that judgment be entered against Google and in
5 Cygnus's favor on the Counterclaims brought by Google. Cygnus further requests that it
6 be granted all of the relief requested in its Amended Complaint.

7
8 **JURY DEMAND**

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

10
11 Date: 3/24/2009

Respectfully submitted

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13 By: /s/ 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 GOOGLE INC.’S ANSWER AND COUNTERCLAIMS** was
4 served 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 24th day of March 2009
26

27 /s/ Lee F. Grossman
28