

1 Peter C. Warner (Ariz. State Bar #009338)  
1723 W. 4<sup>th</sup> Street  
2 Tempe, AZ 85281-2404  
Tel.: (480) 894-6500  
3 Fax: (602) 798-8279  
pcw@warnerpatents.com  
4

5 Attorney for Plaintiff

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

8 Cygnus Systems, Inc. )  
Plaintiff, ) Case No. 2:08-CV-02337-NVW  
9 vs. )  
10 )  
11 Microsoft Corporation; Apple Inc.; and Google )  
Inc., )  
12 Defendants. ) **JURY TRIAL DEMANDED**  
13

14 **PLAINTIFF’S RESPONSE TO MICROSOFT CORPORATION’S**  
15 **ANSWER AND COUNTERCLAIMS**

16 Plaintiff Cygnus Systems, Inc. ("Cygnus") responds to the Counterclaims  
17 contained in the Defendant Microsoft Corporation’s Answer and Counterclaims filed on  
18 March 2, 2009 by Defendant Microsoft Corporation ("Microsoft") as follows:  
19

20 **COUNTERCLAIM**  
21 **The Parties**

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

25 **Response:** Cygnus incorporates by reference paragraphs 1 through 21 of its Amended  
26 Complaint as though set forth fully herein.  
27  
28

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

3 **Response:** Admitted.  
4

5 24. 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 25. This Court has subject-matter jurisdiction over Microsoft's declaratory-  
11 judgment counterclaims under 28 U.S.C. §§ 2201 and 2202. There is an actual  
12 controversy between Microsoft and Cygnus regarding United States Patent No.  
13 7,346,850 ("the '850 patent") because Cygnus asserted in its First Amended Complaint  
14 that Microsoft infringed the '850 patent.  
15

16 **Response:** Admitted.  
17

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

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

1           27. 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           28. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and  
9 1400(b).

10 **Response:** Admitted.  
11

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

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

15 **Response:** Cygnus incorporates by reference paragraphs 1 through 28 of its Response  
16 to Microsoft's Answer And Counterclaims as though set forth fully herein.  
17

18           30. 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           31. Cygnus has asserted that Microsoft infringes the '850 patent.

27 **Response:** Admitted.  
28

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

5 **Response:** Denied.

6 33. 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 34. This case is exceptional and, pursuant to 35 U.S.C. § 285, Microsoft is  
12 entitled to an award of attorneys' fees.  
13

14 **Response:** Denied.

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

18 **PLAINTIFF'S AFFIRMATIVE DEFENSES**

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

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

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



1 **Certificate of Service**

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

6  
7 David J. Healey [healy@fr.com](mailto:healy@fr.com)  
8 Garland Stephens [stephens@fr.com](mailto:stephens@fr.com)  
9 John R. Lane [jclane@fr.com](mailto:jclane@fr.com)  
10 Benjamin C. Elacqua [elacqua@fr.com](mailto:elacqua@fr.com)  
11 Fish & Richardson P.C.  
12 One Huston Center – 28<sup>th</sup> Floor  
13 1221 McKinney Street  
Houston, TX 77010  
Tel: (713) 652-0115  
Fax: (713) 652-0109

14 James Nicholas Bunch [bunch@fr.com](mailto:bunch@fr.com)  
15 Fish & Richardson P.C.  
16 1717 Main Street, Suite 5000  
17 Dallas, TX 75201  
18 Tel: (214) 747-5070  
19 Fax: (214) 747-2091

20 **Attorneys for Defendant Microsoft Corporation and Apple Inc.**

21 Jonathan M. James [JJames@perkinscoie.com](mailto:JJames@perkinscoie.com)  
22 Mark E. Strickland [MStrickland@perkinscoie.com](mailto:MStrickland@perkinscoie.com)  
23 Perkins, Coie, Brown & Bain P.A.  
24 2901 North Central Avenue, Suite 2000  
Phoenix, AZ 85012  
Tel: (602) -351-8000  
Fax: (602)-648-7000

25 **Attorneys for Defendant Google Inc.**

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

27  
28 /s/ Lee F. Grossman