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 11 GRAPHON CORPORATION

8 IN THE UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA

11 CRAIGSLIST, INC.,
 12 Plaintiff,
 13 v.
 14 GRAPHON CORPORATION,
 15 Defendant,
 16 GRAPHON CORPORATION,
 17 Counter-Plaintiff,
 18 v.
 19 CRAIGSLIST, INC.,
 20 Counter-Defendant.

Case No. 3:10-CV-01156-EMC
**ANSWER TO COMPLAINT AND
 COUNTERCLAIM**
 DEMAND FOR JURY TRIAL

22 Defendant GraphOn Corporation (“GraphOn”), by and through its undersigned counsel,
 23 hereby answers the Complaint of Plaintiff craigslist, Inc. (“craigslist”) as follows:

24 **THE PARTIES**

25 1. GraphOn admits that craigslist is a Delaware corporation; GraphOn lacks

1 sufficient knowledge or information sufficient to form a belief as to the truth of the remaining
2 allegations in Paragraph 1 of the Complaint and on that basis, denies the same.

3 2. Admitted.

4 **JURISDICTION**

5 3. With respect to Paragraph 3 of the Complaint, GraphOn admits that this Court has
6 subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) inasmuch
7 as the Complaint purports to state claims for declaratory relief under the patent laws of the
8 United States. However, GraphOn denies that craigslist has in fact adequately stated such claims
9 for relief or that craigslist's claims have any merit and as such denies the remaining allegations
10 contained in Paragraph 3.

12 4. With respect to Paragraph 4, GraphOn will not contest venue in the Northern
13 District of California; GraphOn denies the remaining allegations of Paragraph 4 of the
14 Complaint.

15 **INTRA-DISTRICT ASSIGNMENT**

16 5. Admitted.

17 **BACKGROUND**

18 6. GraphOn lacks sufficient knowledge or information sufficient to form a belief as
19 to the truth of the remaining allegations in Paragraph 6 of the Complaint and on that basis, denies
20 the same.

21 7. Admitted.

22 8. Admitted.

23 9. In answer to the allegations contained in Paragraph 9 of the Complaint, GraphOn
24 admits only that it sent a letter to craigslist on January 18, 2010, and that the terms of the letter
25
26

1 speak for themselves; GraphOn denies each and every other allegation contained in Paragraph 9
2 of the Complaint.

3 10. In answer to the allegations contained in Paragraph 10 of the Complaint, GraphOn
4 admits only that it sent a letter to craigslist on January 18, 2010, and that the terms of the letter
5 speak for themselves; GraphOn denies each and every other allegation contained in Paragraph 10
6 of the Complaint.

7 11. In answer to the allegations contained in Paragraph 11 of the Complaint, GraphOn
8 admits only that it commenced litigation against other parties alleging infringement of some or
9 all of its patents-in-suit as follows:
10

11 a. Admitted.

12 b. Admitted.

13 c. Admitted.

14 12. Admitted.

15 13. Admitted.

16 14. GraphOn admits that craigslist seeks a declaratory judgment and has alleged that
17 there is an actual and justiciable controversy between the parties, but otherwise denies each and
18 every other allegation of Paragraph 14 of the Complaint.
19

20 **COUNT 1:**

21 **DECLARATORY JUDGMENT OF NONINFRINGEMENT**

22 15. Answering the allegations incorporated in Paragraph 15, GraphOn incorporates
23 herein by reference each and every allegation, admission and denial set forth in its Answer to
24 Paragraphs 1 through 14 inclusive.
25

26 16. GraphOn denies the allegations contained in Paragraph 16 of the Complaint.
27

1 17. Admitted.

2 18. GraphOn admits that craigslist seeks a declaratory judgment of noninfringement
3 of the claims of the patents-in-suit, but otherwise denies each and every other allegation of
4 Paragraph 18 of the Complaint.

5 **COUNT 2:**

6 **DECLARATORY JUDGMENT OF INVALIDITY**

7 19. Answering the allegations incorporated in Paragraph 19, GraphOn incorporates
8 herein by reference each and every allegation, admission and denial set forth in its Answer to
9 Paragraphs 1 through 18 inclusive.

10 20. Admitted.

11 21. GraphOn denies the allegations contained in Paragraph 21 of the Complaint.

12 22. GraphOn admits that craigslist seeks a declaratory judgment that the patents-in-
13 suit are invalid, but otherwise denies each and every other allegation of Paragraph 22 of the
14 Complaint.
15
16

17 **PRAYER FOR RELIEF**

18 GraphOn denies that craigslist is entitled to the relief requested or to any relief
19 whatsoever.

20 **AFFIRMATIVE DEFENSES**

21 All possible affirmative defenses may or may not have been asserted herein insofar as
22 sufficient facts were not available to GraphOn after reasonable inquiry upon the filing of this
23 pleading and therefore, GraphOn asserts the following defenses based in fact or upon reasonable
24 belief and hereby reserves the right to amend this Answer to allege appropriate or additional
25 defenses, if subsequent investigation or discovery so warrants.
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First Affirmative Defense

The Complaint of craigslist fails to state a claim upon which relief may be granted.

Second Affirmative Defense

The claims of craigslist are barred, in whole or in part, because the patents are valid and enforceable.

Third Affirmative Defense

The claims of craigslist are barred, in whole or in part, because craigslist has infringed and continues to infringe GraphOn's patents.

Fourth Affirmative Defense

The relief sought by craigslist is barred, in whole or in part, because at all times, GraphOn's conduct was lawful and privileged.

Fifth Affirmative Defense

The claims of craigslist are barred, in whole or in part, to the extent that the conduct of GraphOn toward the U.S. Patent and Trademark Office was reasonable, justified, equitable, lawful and in good faith.

Sixth Affirmative Defense

The claims of craigslist are barred, in whole or in part, to the extent that GraphOn at all times acted in good faith with reasonable and probable cause.

Seventh Affirmative Defense

The claims of craigslist for attorneys' fees are barred, in whole or in part, to the extent that craigslist has failed to allege an exceptional case as to support an award of attorneys' fees pursuant to 35 U.S.C. § 285.

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COUNTERCLAIM

Pursuant to Rule 13 of the Federal Rules of Civil Procedure, Defendant/Counter-Plaintiff GraphOn Corporation, Inc. (“GraphOn”), alleges the following Counterclaim against Plaintiff/Counter-Defendant craigslist, Inc. (“craigslist”):

JURISDICTION AND VENUE

1. This is an action arising under the United States Patent Act, 35 U.S.C. § 1, *et seq.* GraphOn requests damages for craigslist’s infringement of the patents-in-suit, as defined more specifically below.

2. Subject to GraphOn’s affirmative defenses and denials, this Court has jurisdiction over the subject matter of the Counterclaims under 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over craigslist because it infringes GraphOn’s patents by offering online services on www.craigslist.org and/or has customers who reside in, or may be found in, the Northern District of California. Craigslist has submitted to the personal jurisdiction of this Court by bringing the present action.

PARTIES

4. Counter-Plaintiff GraphOn Corporation, Inc. (“GraphOn”) is a corporation organized and existing under the laws of the State of Delaware, and has its principal place of business at 5400 Soquel Avenue, Santa Cruz, California.

5. Counter-Defendant craigslist, Inc. (“craigslist”) has alleged that it is a Delaware corporation having its principal place of business in San Francisco, California.

**FIRST COUNTERCLAIM
Infringement of the ‘538, ‘940, ‘034 and ‘591 Patents**

6. GraphOn repeats, realleges and incorporates by this reference, each and every

1 allegation contained in Paragraphs 1 through 5 as though fully set forth herein.

2 7. On November 27, 2001, United States Patent No. 6,324,538 (“the ‘538 patent”)
3 entitled “Automated On-Line Information Service and Directory, Particularly for the World
4 Wide Web” was duly and legally issued to Ralph E. Wesinger, Jr. and Christopher D. Coley. All
5 rights and interest in the ‘538 patent were assigned to GraphOn. A true and correct copy of the
6 ‘538 patent is attached hereto as Exhibit A.

7 8. On February 1, 2005, United States Patent No. 6,850,940 (“the ‘940 patent”)
8 entitled “Automated On-Line Information Service and Directory, Particularly for the World
9 Wide Web” was duly and legally issued to Ralph E. Wesinger, Jr. and Christopher D. Coley. All
10 rights and interest in the ‘940 patent were assigned to GraphOn. A true and correct copy of the
11 ‘940 patent is attached hereto as Exhibit B.

12 9. On April 11, 2006, United States Patent No. 7,028,034 (“the ‘034 patent”) entitled
13 “Method and Apparatus for Providing a Dynamically-Updating Pay-For-Service Web Site” was
14 duly and legally issued to Ralph E. Wesinger, Jr. and Christopher D. Coley. All rights and
15 interest in the ‘034 patent were assigned to GraphOn. A true and correct copy of the ‘034 patent
16 is attached hereto as Exhibit C.

17 10. On September 11, 2007, United States Patent No. 7,269,591 (“the ‘591 Patent”)
18 entitled “Method and Apparatus for Providing a Pay-For-Service Web Site” was duly and legally
19 issued to Ralph E. Wesinger, Jr. and Christopher D. Coley. All rights and interest in the ‘591
20 patent were assigned to GraphOn. A true and correct copy of the ‘591 patent is attached hereto as
21 Exhibit D.

22 11. Craigslist offers on its website www.craigslist.org, online localized classified ad
23 placement and related online services. On its website, among other things, craigslist offers
24

1 online services to allow its users to post searchable ads, classifieds and forums relating to jobs,
2 housing, goods, services, romance, local activities and advice.

3 12. Upon information and belief, craigslist has infringed and continues to infringe
4 under 35 U.S.C. § 271, the '538, '940, '034 and '591 patents ("the patents-in-suit"). The
5 infringing acts include, but are not limited to, offering online services on www.craigslist.org that
6 are covered by one or more claims of at least one or more of the patents-in-suit.
7

8 13. The infringing acts of craigslist have caused damage to GraphOn. Under 35
9 U.S.C. § 284, GraphOn is entitled to recover from craigslist, the damages sustained by GraphOn
10 as a result of its infringement of the patents-in-suit. The infringement of GraphOn's exclusive
11 rights under the patents-in-suit by craigslist will continue to damage GraphOn's business,
12 causing irreparable harm, for which there is no adequate remedy of law, unless enjoined by this
13 Court under 35 U.S.C. § 283.
14

15 14. Upon information and belief, the infringement of the patents-in-suit by craigslist
16 has been willful and deliberate, and entitles GraphOn to increased damages under 35 U.S.C. §
17 284 and attorney's fees and costs under 35 U.S.C. § 285.
18

19 **PRAYER FOR RELIEF**

20 WHEREFORE, GraphOn respectfully requests that this Court enter judgment against
21 craigslist as follows:

22 (a) That craigslist take nothing by its Complaint and that craigslist's Complaint be
23 dismissed with prejudice;

24 (b) That craigslist has infringed and continues to infringe the '538, '940, '034 and
25 '591 patents;
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1 (c) For preliminary and permanent injunctions under 35 U.S.C. § 283 against
2 craigslist and its directors, officers, employees, agents, subsidiaries, parents, attorneys, and all
3 persons acting in concert, on behalf of, in joint venture, or in partnership with craigslist from
4 further acts of infringement;

5 (d) For damages to be paid by craigslist adequate to compensate GraphOn for its
6 infringement of the patents-in-suit, including interests, costs and disbursements as the Court may
7 deem appropriate under 35 U.S.C. § 284;

8 (e) That this is an exceptional case and awarding GraphOn attorneys' fees under 35
9 U.S.C. § 285; and

10 (f) For such other and further relief at law and in equity as the Court may deem just
11 and proper.
12

13 DEMAND FOR JURY TRIAL

14 Pursuant to the Federal Rules of Civil Procedure Rule 38, GraphOn Corporation hereby
15 demands a trial by jury on all issues.
16

17 Dated: April 8, 2010

By: /s/ Michael D. Rounds

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27 Attorneys for GraphOn Corporation
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CERTIFICATE OF SERVICE

The undersigned certifies that, on this date, he caused this document to be electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of filing to counsel of record for each party.

Dated: April 8, 2010

/s/ Robert Hunter
An Employee of Watson Rounds