

1 TIMOTHY T. SCOTT (SBN 126971)
2 tscott@kslaw.com
3 GEOFFREY M. EZGAR (SBN 184243)
4 gezgar@kslaw.com
5 LEO SPOONER III (SBN 241541)
6 lspooner@kslaw.com
7 KING & SPALDING LLP
8 333 Twin Dolphin Drive, Suite 400
9 Redwood Shores, CA 94065
10 Telephone: (650) 590-0700
11 Facsimile: (650) 590-1900

12 SCOTT T. WEINGAERTNER
13 sweingaertner@kslaw.com
14 ROBERT F. PERRY
15 rperry@kslaw.com
16 CHRISTOPHER C. CARNAVAL
17 ccarnaval@kslaw.com
18 MARK H. FRANCIS
19 mfrancis@kslaw.com
20 KING & SPALDING LLP
21 1185 Avenue of the Americas
22 New York, NY 10036-4003
23 Telephone: (212) 556-2100
24 Facsimile: (212) 556-2222

25 Attorneys for Defendant
26 GOOGLE INC.

27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

21 TEXTSCAPE LLC,
22
23 Plaintiff,
24
25 v.
26 GOOGLE INC.
27
28 Defendant.

Case No. 5:09-cv-04552-JF

Honorable: Judge Jeremy Fogel

**GOOGLE INC.'S ANSWER TO
PLAINTIFF'S COMPLAINT FOR
PATENT INFRINGEMENT; AND
ASSERTION OF COUNTERCLAIMS**

JURY TRIAL DEMANDED

1 **GOOGLE INC.'S ANSWER TO PLAINTIFF'S COMPLAINT**
2 **FOR PATENT INFRINGEMENT; AND ASSERTION OF COUNTERCLAIMS**

3 Defendant Google Inc. ("Google") answers the Complaint of Textscape LLC
4 ("Textscape") as follows:

5 **The Parties**

6 1. Google is without knowledge or information sufficient to form a belief as to the
7 truth of the allegations of paragraph 1, and therefore denies them.

8 2. Google admits that Google Inc. is a Delaware corporation with a principal place
9 of business at 1600 Amphitheatre Parkway, Mountain View, California 94043. Google admits
10 that it may be served with process through its registered agent Corporation Service Company
11 d/b/a CSC-Lawyers Incorporating Service Company in Sacramento, California. Google denies
12 any remaining allegations of paragraph 2.

13 **Jurisdiction and Venue**

14 3. Google admits that this action invokes the United States patent laws, and that this
15 Court has subject matter jurisdiction over patent law claims. Google admits that personal
16 jurisdiction and venue is proper in the Northern District of California. Google denies any
17 remaining allegations of paragraph 3.

18 **Claim for Patent Infringement**

19 4. Google admits that U.S. Patent No. 5,713,740 ("the '740 patent") is entitled
20 "System and method for converting written text into a graphical image for improved
21 comprehension by the learning disabled" and bears an issuance date of February 3, 1998.
22 Google further admits that what purports to be a copy of the '740 patent was attached to
23 Textscape's Complaint as Exhibit A. Google is without knowledge or information sufficient to
24 form a belief as to the truth of any remaining allegations of paragraph 4, and therefore denies
25 them.
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Sixth Defense

6. The owner of the '740 patent has dedicated to the public all methods, apparatus, and products disclosed in the '740 patent, but not literally claimed therein, and is estopped from claiming infringement by any such public domain methods, apparatus, or products.

Seventh Defense

7. Textscape's claim for damages, if any, against Google for alleged infringement of the '740 patent are limited by 35 U.S.C. §§ 286, 287 and 288.

Eighth Defense

8. This case is exceptional against Textscape under 35 U.S.C. § 285.

Ninth Defense

9. To the extent that the alleged invention has been used or manufactured by or for the United States, the claims for relief are barred by 28 U.S.C. § 1498.

COUNTERCLAIMS

The Parties

1. Google Inc. is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, California 94043.

2. On information and belief, Textscape LLC is a corporation organized and existing under the laws of the State of New Jersey, with its principal place of business at 290 Glenn Avenue, Lawrenceville, New Jersey 08648.

Jurisdiction and Venue

3. Subject to Google's affirmative defenses and denials, Google alleges that this Court has jurisdiction over the subject matter of these Counterclaims under, without limitation,

1 28 U.S.C. §§ 1331, 1367, 1338(a), 2201, and 2202, and venue for these Counterclaims is proper
2 in this district.

3 4. This Court has personal jurisdiction over plaintiff.

4 **Factual Background**

5 5. In its Complaint, Textscape asserts that Google has infringed U.S. Patent
6 5,713,740 (“the ‘740 patent”).

7 6. Google does not infringe any valid and enforceable claim of the ‘740 patent.

8 7. Consequently, there is an actual case or controversy between the parties over the
9 ‘740 patent.
10

11 **COUNT ONE**

12 **Declaratory Judgment of Non-Infringement of U.S. Patent No. 5,713,740**

13 8. Google restates and incorporates by reference its allegations in paragraphs 1-7 of
14 its Counterclaims.

15 9. An actual case or controversy exists between Google and Textscape as to whether
16 the ‘740 patent is infringed by Google.

17 10. A judicial declaration is necessary and appropriate so that Google may ascertain
18 its rights regarding the ‘740 patent.

19 11. Google has not infringed and does not infringe, directly or indirectly, any valid
20 and enforceable claim of the ‘740 patent.

21 12. This is an exceptional case under 35 U.S.C. § 285 because Textscape filed its
22 Complaint with knowledge of the facts stated in this Counterclaim.
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COUNT TWO

Declaratory Judgment of Invalidity of U.S. Patent No. 5,713,740

13. Google restates and incorporates by reference its allegations in paragraphs 1–12 of its Counterclaims.

14. An actual case or controversy exists between Google and Textscape as to whether the ‘740 patent is invalid.

15. A judicial declaration is necessary and appropriate so that Google may ascertain its rights as to whether the ‘740 patent is invalid.

16. The claims of the ‘740 patent are invalid under one or more of 35 U.S.C. §§ 100 et seq., 101, 102, 103, and 112.

17. This is an exceptional case under 35 U.S.C. § 285 because Textscape filed its Complaint with knowledge of the facts stated in this Counterclaim.

Prayer for Relief

WHEREFORE, Google prays for judgment as follows:

- a. A judgment dismissing Textscape’s Complaint against Google with prejudice;
- b. A judgment in favor of Google on all of its Counterclaims;
- c. A declaration that Google has not infringed, contributed to the infringement of, or induced others to infringe, either directly or indirectly, any valid and enforceable claims of the ‘740 patent;
- d. A declaration that the ‘740 patent is invalid;
- e. A declaration that Textscape’s claims are barred by the doctrines of laches, equitable estoppel, and/or waiver.
- f. A declaration that the ‘740 patent is unenforceable due to unclean hands.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- g. A declaration that this case is exceptional and an award to Google of its reasonable costs and expenses of litigation, including attorneys' fees and expert witness fees;
- h. Such other and further relief as this Court may deem just and proper.

Jury Demand

Textscape's demand that all issues be determined by a jury trial does not state any allegation, and Google is not required to respond. To the extent that any allegations are included in the demand, Google denies these allegations.

DATED: January 19, 2010

KING & SPALDING LLP

By: /s/ Geoffrey Ezgar
Geoffrey Ezgar (SBN 184243)
Attorneys for Defendant
GOOGLE INC.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

In accordance with Rule 38 of the Federal Rules of Civil Procedure, Google Inc. respectfully demands a jury trial of all issues triable to a jury in this action.

DATED: January 19, 2010

KING & SPALDING LLP

By: /s/ Geoffrey Ezgar
Geoffrey Ezgar (SBN 184243)
Attorneys for Defendant
GOOGLE INC.