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7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 OAKLAND DIVISION
11

12 GOOGLE INC.,
13 Plaintiff,
14 v.
15 ROCKSTAR CONSORTIUM US LP and
MOBILESTAR TECHNOLOGIES LLC,
16 Defendants.
17

CASE NO. 13-cv-5933-CW
**ANSWER OF GOOGLE INC. TO
COUNTERCLAIMS FOR PATENT
INFRINGEMENT OF ROCKSTAR
CONSORTIUM US LP AND
MOBILESTAR TECHNOLOGIES LLC
DEMAND FOR JURY TRIAL**

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1 Google Inc. (“Google”) answers the Counterclaims of Rockstar Consortium US LP and
2 MobileStar Technologies LLC (collectively, “Rockstar”) as follows:

3 **PARTIES**

4 1. Google admits that Rockstar Consortium US LP is a limited partnership organized
5 and existing under the laws of Delaware. Rockstar Consortium US LP’s principal place of
6 business is in Ottawa, Canada. Google therefore denies the remaining allegations of this
7 paragraph.

8 2. Google admits that MobileStar Technologies LLC is a limited liability corporation
9 organized and existing under the laws of Delaware. MobileStar Technologies LLC’s principal
10 place of business is in Ottawa, Canada. Google therefore denies the remaining allegations of this
11 paragraph.

12 3. Google’s correct name is “Google Inc.” Google otherwise admits the allegations of
13 this paragraph.

14 **BACKGROUND FACTS**

15 4. Google admits that after a number of entities filed for bankruptcy protection under
16 the laws of Canada and the United States, the United States Bankruptcy Court for the District of
17 Delaware approved procedures for an auction of a patent portfolio of more than 6,000 patents. *In*
18 *re Nortel Networks Inc., et al.*, Case No. 09-10138, Docket No. 5935 (July 11, 2011). Google is
19 without knowledge or information sufficient to form a belief as to the truth of the remaining
20 allegations of this paragraph, and therefore denies them.

21 5. Google admits that one of its subsidiaries participated in the auction
22 approved by the United States Bankruptcy Court for the District of Delaware, and placed bids in
23 that auction. Google denies the remaining allegations of this paragraph.

24 6. Google admits that, on April 4, 2011, one of its subsidiaries offered to purchase a
25 portfolio of more than 6,000 patents under the supervision of the United States Bankruptcy Court
26 for the District of Delaware. Google denies the remaining allegations of this paragraph.

27 7. Google admits that one of its subsidiaries participated in the auction approved by
28 the United States Bankruptcy Court for the District of Delaware, and placed bids in that auction.

1 Google denies the remaining allegations of this paragraph, and specifically denies that it was put
2 on notice, or otherwise aware, of any alleged infringement of the patents Rockstar has asserted in
3 this action.

4 8. Google admits that one of its subsidiaries participated in the auction approved by
5 the United States Bankruptcy Court for the District of Delaware, and placed a bid of \$900,000,000
6 to purchase a portfolio of more than 6,000 patents under the supervision of that Court. Google is
7 without knowledge or information sufficient to form a belief as to the truth of whether “a group
8 led by the current shareholders of Rockstar Consortium purchased the portfolio for \$4.5 billion,”
9 and therefore denies these allegations of this paragraph. Google admits that its subsidiary placed
10 additional bids and that the winning bid at the auction was \$4.5 billion. Google denies the
11 remaining allegations of this paragraph.

12 9. Google admits that it offers for sale and sells certain devices bearing the “Nexus”
13 brand. Google denies the remaining allegations of this paragraph, and specifically denies that it
14 has committed any acts of infringement.

15 10. Google admits that devices bearing the “Nexus” brand include the Nexus 5, Nexus
16 7, Nexus 10, and Galaxy Nexus. Google denies the remaining allegations of this paragraph.

17 **JURISDICTION AND VENUE**

18 11. Google admits the allegations of this paragraph.

19 12. This paragraph contains no assertions and therefore requires no response by
20 Google. Nonetheless, Google notes that this Court has already found personal jurisdiction over
21 Rockstar, has already found venue to be proper, and has already denied Rockstar’s motion to
22 transfer this action under 28 U.S.C. § 1404.

23 13. Google admits that this Court has personal jurisdiction over Google. Google
24 admits that it has conducted business and does conduct business in California. Google admits that
25 its principal place of business is at 1600 Amphitheatre Parkway, Mountain View, California,
26 94043. Google admits that it offers for sale and sells in the United States and in this District
27 certain of Google’s Nexus devices. Google denies the remaining allegations in this paragraph, and
28 specifically denies that it has committed any acts of infringement.

1 admits that after Rockstar filed its patent infringement actions in the Eastern District of Texas on
2 October 31, 2013 (the “Halloween actions”), Google became aware of the claims Rockstar
3 asserted in those actions. Google admits that it was aware of the ’551 Patent before filing its
4 Complaint in this action. Google denies the remaining allegations in this paragraph, specifically
5 denies that it has committed any acts of infringement, and specifically denies that by April 4,
6 2011, Google was put on notice, or was otherwise aware, of any alleged infringement of the
7 patents in this action.

8 32. Google denies the allegations in this paragraph.

9 33. Google denies the allegations in this paragraph.

10 34. Google denies the allegations in this paragraph.

11 35. Google denies the allegations in this paragraph, and specifically denies that it has
12 committed any acts of infringement.

13 36. Google denies the allegations in this paragraph, and specifically denies that it has
14 committed any acts of infringement.

15 **The ’937 Patent**

16 37. Google admits that it offers for sale and sells Nexus 5, Nexus 7 and Nexus 10
17 devices in the United States. Google admits that it previously offered for sale and sold Galaxy
18 Nexus devices in the United States. Google admits that it made software for the Galaxy Nexus,
19 and makes software for the Nexus 5, Nexus 7 and Nexus 10. Google admits that some of its
20 employees use some of the features of these devices in this District. Google denies the remaining
21 allegations in this paragraph.

22 38. Google admits that one of its subsidiaries participated in the auction approved by
23 the United States Bankruptcy Court for the District of Delaware and, on April 4, 2011, placed a
24 bid to purchase a portfolio of more than 6,000 patents under the supervision of that Court. Google
25 admits that after Rockstar filed its patent infringement actions in the Eastern District of Texas on
26 October 31, 2013 (the “Halloween actions”), Google became aware of the claims Rockstar
27 asserted in those actions. Google admits that it was aware of the ’937 Patent before filing its
28 Complaint in this action. Google denies the remaining allegations in this paragraph, specifically

1 denies that it has committed any acts of infringement, and specifically denies that by April 4,
2 2011, Google was put on notice, or was otherwise aware, of any alleged infringement of the
3 patents in this action.

4 39. Google denies the allegations in this paragraph, and specifically denies that it has
5 committed any acts of infringement.

6 40. Google denies the allegations in this paragraph, and specifically denies that it has
7 committed any acts of infringement.

8 41. Google denies the allegations in this paragraph, and specifically denies that it has
9 committed any acts of infringement.

10 42. Google denies the allegations in this paragraph, and specifically denies that it has
11 committed any acts of infringement.

12 43. Google admits that one of its subsidiaries participated in the auction approved by
13 the United States Bankruptcy Court for the District of Delaware and, on April 4, 2011, placed a
14 bid to purchase a portfolio of more than 6,000 patents under the supervision of that Court. Google
15 admits that after Rockstar filed its patent infringement actions in the Eastern District of Texas on
16 October 31, 2013 (the “Halloween actions”), Google became aware of the claims Rockstar
17 asserted in those actions. Google admits that it was aware of the ’937 Patent before filing its
18 Complaint in this action. Google denies the remaining allegations in this paragraph, specifically
19 denies that it has committed any acts of infringement, and specifically denies that by April 4,
20 2011, Google was put on notice, or was otherwise aware, of any alleged infringement of the
21 patents in this action.

22 44. Google denies the allegations in this paragraph, and specifically denies that it has
23 committed any acts of infringement.

24 45. Google denies the allegations in this paragraph, and specifically denies that it has
25 committed any acts of infringement.

26 46. Google denies the allegations in this paragraph, and specifically denies that it has
27 committed any acts of infringement.

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1 asserted in those actions. Google admits that it was aware of the '298 Patent before filing its
2 Complaint in this action. Google denies the remaining allegations in this paragraph, specifically
3 denies that it has committed any acts of infringement, and specifically denies that by April 4,
4 2011, Google was put on notice, or was otherwise aware, of any alleged infringement of the
5 patents in this action.

6 55. Google denies the allegations in this paragraph, and specifically denies that it has
7 committed any acts of infringement.

8 56. Google denies the allegations in this paragraph, and specifically denies that it has
9 committed any acts of infringement.

10 57. Google denies the allegations in this paragraph, and specifically denies that it has
11 committed any acts of infringement.

12 58. Google denies the allegations in this paragraph, and specifically denies that it has
13 committed any acts of infringement.

14 59. Google admits that one of its subsidiaries participated in the auction approved by
15 the United States Bankruptcy Court for the District of Delaware and, on April 4, 2011, placed a
16 bid to purchase a portfolio of more than 6,000 patents under the supervision of that Court. Google
17 admits that after Rockstar filed its patent infringement actions in the Eastern District of Texas on
18 October 31, 2013 (the "Halloween actions"), Google became aware of the claims Rockstar
19 asserted in those actions. Google admits that it was aware of the '298 Patent before filing its
20 Complaint in this action. Google denies the remaining allegations in this paragraph, specifically
21 denies that it has committed any acts of infringement, and specifically denies that by April 4,
22 2011, Google was put on notice, or was otherwise aware, of any alleged infringement of the
23 patents in this action.

24 60. Google denies the allegations in this paragraph, and specifically denies that it has
25 committed any acts of infringement.

26 61. Google denies the allegations in this paragraph, and specifically denies that it has
27 committed any acts of infringement.

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1 October 31, 2013 (the “Halloween actions”), Google became aware of the claims Rockstar
2 asserted in those actions. Google admits that it was aware of the ’973 Patent before filing its
3 Complaint in this action. Google denies the remaining allegations in this paragraph, specifically
4 denies that it has committed any acts of infringement, and specifically denies that by April 4,
5 2011, Google was put on notice, or was otherwise aware, of any alleged infringement of the
6 patents in this action.

7 70. Google denies the allegations in this paragraph, and specifically denies that it has
8 committed any acts of infringement.

9 71. Google denies the allegations in this paragraph, and specifically denies that it has
10 committed any acts of infringement.

11 72. Google denies the allegations in this paragraph, and specifically denies that it has
12 committed any acts of infringement.

13 73. Google admits that one of its subsidiaries participated in the auction approved by
14 the United States Bankruptcy Court for the District of Delaware and, on April 4, 2011, placed a
15 bid to purchase a portfolio of more than 6,000 patents under the supervision of that Court. Google
16 admits that after Rockstar filed its patent infringement actions in the Eastern District of Texas on
17 October 31, 2013 (the “Halloween actions”), Google became aware of the claims Rockstar
18 asserted in those actions. Google admits that it was aware of the ’973 Patent before filing its
19 Complaint in this action. Google denies the remaining allegations in this paragraph, specifically
20 denies that it has committed any acts of infringement, and specifically denies that by April 4,
21 2011, Google was put on notice, or was otherwise aware, of any alleged infringement of the
22 patents in this action.

23 74. Google denies the allegations in this paragraph, and specifically denies that it has
24 committed any acts of infringement.

25 75. Google denies the allegations in this paragraph, and specifically denies that it has
26 committed any acts of infringement.

27 76. Google denies the allegations in this paragraph, and specifically denies that it has
28 committed any acts of infringement.

1 October 31, 2013 (the “Halloween actions”), Google became aware of the claims Rockstar
2 asserted in those actions. Google admits that it was aware of the ’131 Patent before filing its
3 Complaint in this action. Google denies the remaining allegations in this paragraph, specifically
4 denies that it has committed any acts of infringement, and specifically denies that by April 4,
5 2011, Google was put on notice, or was otherwise aware, of any alleged infringement of the
6 patents in this action.

7 85. Google denies the allegations in this paragraph, and specifically denies that it has
8 committed any acts of infringement.

9 86. Google denies the allegations in this paragraph, and specifically denies that it has
10 committed any acts of infringement.

11 87. Google denies the allegations in this paragraph, and specifically denies that it has
12 committed any acts of infringement.

13 88. Google denies the allegations in this paragraph, and specifically denies that it has
14 committed any acts of infringement.

15 89. Google admits that one of its subsidiaries participated in the auction approved by
16 the United States Bankruptcy Court for the District of Delaware and, on April 4, 2011, placed a
17 bid to purchase a portfolio of more than 6,000 patents under the supervision of that Court. Google
18 admits that after Rockstar filed its patent infringement actions in the Eastern District of Texas on
19 October 31, 2013 (the “Halloween actions”), Google became aware of the claims Rockstar
20 asserted in those actions. Google admits that it was aware of the ’131 Patent before filing its
21 Complaint in this action. Google denies the remaining allegations in this paragraph, specifically
22 denies that it has committed any acts of infringement, and specifically denies that by April 4,
23 2011, Google was put on notice, or was otherwise aware, of any alleged infringement of the
24 patents in this action.

25 90. Google denies the allegations in this paragraph, and specifically denies that it has
26 committed any acts of infringement.

27 91. Google denies the allegations in this paragraph, and specifically denies that it has
28 committed any acts of infringement.

1 bid to purchase a portfolio of more than 6,000 patents under the supervision of that Court. Google
2 admits that after Rockstar filed its patent infringement actions in the Eastern District of Texas on
3 October 31, 2013 (the “Halloween actions”), Google became aware of the claims Rockstar
4 asserted in those actions. Google admits that it was aware of the ’591 Patent before filing its
5 Complaint in this action. Google denies the remaining allegations in this paragraph, specifically
6 denies that it has committed any acts of infringement, and specifically denies that by April 4,
7 2011, Google was put on notice, or was otherwise aware, of any alleged infringement of the
8 patents in this action.

9 101. Google denies the allegations in this paragraph, and specifically denies that it has
10 committed any acts of infringement.

11 102. Google denies the allegations in this paragraph, and specifically denies that it has
12 committed any acts of infringement.

13 103. Google denies the allegations in this paragraph, and specifically denies that it has
14 committed any acts of infringement.

15 104. Google admits that one of its subsidiaries participated in the auction approved by
16 the United States Bankruptcy Court for the District of Delaware and, on April 4, 2011, placed a
17 bid to purchase a portfolio of more than 6,000 patents under the supervision of that Court. Google
18 admits that after Rockstar filed its patent infringement actions in the Eastern District of Texas on
19 October 31, 2013 (the “Halloween actions”), Google became aware of the claims Rockstar
20 asserted in those actions. Google admits that it was aware of the ’591 Patent before filing its
21 Complaint in this action. Google denies the remaining allegations in this paragraph, specifically
22 denies that it has committed any acts of infringement, and specifically denies that by April 4,
23 2011, Google was put on notice, or was otherwise aware, of any alleged infringement of the
24 patents in this action.

25 105. Google denies the allegations in this paragraph, and specifically denies that it has
26 committed any acts of infringement.

27 106. Google denies the allegations in this paragraph, and specifically denies that it has
28 committed any acts of infringement.

1 bid to purchase a portfolio of more than 6,000 patents under the supervision of that Court. Google
2 admits that after Rockstar filed its patent infringement actions in the Eastern District of Texas on
3 October 31, 2013 (the “Halloween actions”), Google became aware of the claims Rockstar
4 asserted in those actions. Google admits that it was aware of the ’572 Patent before filing its
5 Complaint in this action. Google denies the remaining allegations in this paragraph, specifically
6 denies that it has committed any acts of infringement, and specifically denies that by April 4,
7 2011, Google was put on notice, or was otherwise aware, of any alleged infringement of the
8 patents in this action.

9 116. Google denies the allegations in this paragraph, and specifically denies that it has
10 committed any acts of infringement.

11 117. Google denies the allegations in this paragraph, and specifically denies that it has
12 committed any acts of infringement.

13 118. Google admits that one of its subsidiaries participated in the auction approved by
14 the United States Bankruptcy Court for the District of Delaware and, on April 4, 2011, placed a
15 bid to purchase a portfolio of more than 6,000 patents under the supervision of that Court. Google
16 admits that after Rockstar filed its patent infringement actions in the Eastern District of Texas on
17 October 31, 2013 (the “Halloween actions”), Google became aware of the claims Rockstar
18 asserted in those actions. Google admits that it was aware of the ’572 Patent before filing its
19 Complaint in this action. Google denies the remaining allegations in this paragraph, specifically
20 denies that it has committed any acts of infringement, and specifically denies that by April 4,
21 2011, Google was put on notice, or was otherwise aware, of any alleged infringement of the
22 patents in this action.

23 119. Google denies the allegations in this paragraph.

24 120. Google denies the allegations in this paragraph.

25 121. Google denies the allegations in this paragraph.

26 122. Google denies the allegations in this paragraph, and specifically denies that it has
27 committed any acts of infringement.

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1 **PRAYER FOR RELIEF**

2 130. These paragraphs set forth the statement of relief requested by Rockstar to which
3 no response is required. Google denies that Rockstar is entitled to any of the requested relief and
4 denies any allegations.

5 **AFFIRMATIVE DEFENSES**

6 131. Subject to the responses above, Google alleges and asserts the following defenses
7 in response to the allegations, undertaking the burden of proof only as to those defenses deemed
8 affirmative defenses by law, regardless of how such defenses are denominated herein. In addition
9 to the affirmative defenses described below, subject to its responses above, Google specifically
10 reserves all rights to allege additional affirmative defenses that become known through the course
11 of discovery.

12 **FIRST DEFENSE—NON-INFRINGEMENT**

13 132. Google does not infringe and has not infringed (not directly, contributorily, or by
14 inducement), either literally or under the doctrine of equivalents, and is not liable for infringement
15 of any valid and enforceable claim of the '551, '937, '298, '973, '131, '591, or '572 Patents
16 (collectively, the "Patents-in-Suit").

17 **SECOND DEFENSE—INVALIDITY**

18 133. The claims of the Patents-in-Suit are invalid and unenforceable under 35 U.S.C.
19 § 101 because the claims are directed to abstract ideas or other non-statutory subject matter.

20 134. The claims of the Patents-in-Suit are invalid and unenforceable under 35 U.S.C.
21 § 102 because the claims lack novelty, and are taught and suggested by the prior art.

22 135. The claims of the Patents-in-Suit are invalid and unenforceable under 35 U.S.C.
23 § 103 because the claims are obvious in view of the prior art.

24 136. The claims of the Patents-in-Suit are invalid and unenforceable for failure satisfy
25 the conditions set forth in 35 U.S.C. § 112, including failure of written description, lack of
26 enablement, and claim indefiniteness.

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THIRD DEFENSE—LIMITATIONS ON PATENT DAMAGES

137. Rockstar’s claim for damages, if any, against Google for alleged infringement of the Patents-in-Suit is limited by 35 U.S.C. §§ 286, 287 & 288.

FOURTH DEFENSE—PROSECUTION HISTORY ESTOPPEL

138. By reason of statements, representations, concessions, admissions, arguments, or amendments, whether explicit or implicit, made by or on behalf of the applicants during the prosecution of the patent applications that led to the issuance of the Patents-in-Suit, Rockstar’s claims of patent infringement are barred in whole or in part by the doctrine of prosecution history estoppel.

FIFTH DEFENSE—ESTOPPEL

139. On information and belief, Rockstar’s claims are barred, in whole or in part, by the doctrines of estoppel, laches, disclaimer, patent misuse, and waiver.

SIXTH DEFENSE—PATENT UNENFORCEABILITY (UNCLEAN HANDS)

140. Rockstar’s claims against Google are barred under the doctrine of unclean hands.

PRAYER FOR RELIEF

WHEREFORE, Google prays for judgment and relief as follows:

- A. Dismissing, with prejudice, Rockstar’s claims against Google;
- B. Denying all relief that Rockstar seeks against Google;
- C. Finding that this an exceptional case under 35 U.S.C. § 285;
- D. Awarding Google its costs and attorneys’ fees in connection with this action; and
- E. Such further and additional relief as the Court deems just and proper.

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JURY DEMAND

Google demands a jury trial on all issues and claims so triable.

DATED: May 27, 2014

Respectfully submitted,

QUINN EMANUEL URQUHART & SULLIVAN, LLP

By /s Matthew S. Warren

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