

Defendant and counterclaimant Google Inc. (“Google”) by and through the undersigned counsel, answers the First Amended Complaint for Patent Infringement (“Amended Complaint”) (Dkt. No. 39) of plaintiff and counterdefendant Personalized User Model, LLP (“PUM”), as follows:

Jurisdiction and Venue

1. Google admits that the Amended Complaint is an action for alleged patent infringement under the patent laws of the United States, Title 35 of the United States Code, and admits that this Court has subject matter jurisdiction over such actions based on 28 U.S.C. §§ 1331 and 1338(a). Google denies any allegation of infringement of the patents identified in the Amended Complaint.

2. In response to paragraph 2 of the Amended Complaint and solely for the purpose of this action, Google does not contest venue in this District. However, the interests and convenience of the parties would be better served by transferring this case to a different district. Google denies any remaining allegations in paragraph 2.

The Parties and Patents-In-Suit

3. Google is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 3 of the Amended Complaint and therefore denies them.

4. Google admits it is a Delaware corporation with its corporate headquarters and principal place of business at 1600 Amphitheatre Parkway, Mountain View, California, 94043.

5. Google admits that what appears to be a copy of United States Patent No. 6,981,040 B1 (the “’040 patent”) is attached to the Amended Complaint as Exhibit A. Google further admits that the face of what appears to be the ‘040 patent indicates that its title is “Automatic, Personalized Online Information and Product Services,” that the named inventors

are Yochai Konig, Roy Twersky, and Michael Berthold, and that the assignee is Utopy, Inc. Google denies that Yochai Konig possessed any valid legal interest to the '040 patent or could lawfully assign any such interest to Utopy, Inc. Google is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 5 of the Amended Complaint and therefore denies them.

6. Google admits that what appears to be a copy of United States Patent No. 7,320,031 B1 (the "'031 patent") is attached to the Amended Complaint as Exhibit A. Google further admits that the face of what appears to be the '031 patent indicates that its title is "Automatic, Personalized Online Information and Product Services," that the named inventors are Yochai Konig, Roy Twersky, and Michael Berthold, and that the assignee is Utopy, Inc. Google denies that Yochai Konig possessed any valid legal interest to the '031 patent or could lawfully assign any such interest to Utopy, Inc. Google is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 6 of the Amended Complaint and therefore denies them.

7. Google admits that what appears to be a copy of United States Patent No. 7,685,276 (the "'276 patent") is attached to the Amended Complaint as Exhibit C. Google further admits that the face of what appears to be the '276 patent indicates that its title is "Automatic, Personalized Online Information and Product Services," that the named inventors are Yochai Konig, Roy Twersky, and Michael Berthold, and that the assignee is Utopy, Inc. Google denies that Yochai Konig possessed any valid legal interest to the '276 patent or could lawfully assign any such interest to Utopy, Inc. Google is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 5 of the Amended Complaint and therefore denies them.

Claim for Relief

8. Google incorporates its responses to the allegations of paragraphs 1 through 7 of the Amended Complaint.

9. Google denies each and every allegation of paragraph 9 of the Amended Complaint.

10. Google denies each and every allegation of paragraph 10 of the Amended Complaint.

11. Google denies each and every allegation of paragraph 11 of the Amended Complaint.

12. Google denies each and every allegation of paragraph 12 of the Amended Complaint.

13. Google denies each and every allegation of paragraph 13 of the Amended Complaint.

14. Google admits that it received a communication in January 2008 regarding the '040 and '031 patents. Google denies any remaining allegations in paragraph 14.

15. Google denies each and every allegation of paragraph 15 of the Amended Complaint.

Prayer for Relief

Google denies that PUM is entitled to the relief sought by its Prayer for Relief, set forth on pages 3-4 of the Amended Complaint.

FIRST DEFENSE: Non-Infringement of the '040 Patent

Google has not infringed and does not infringe, either directly, contributorily, or by inducement, any valid and enforceable claim of the '040 patent.

SECOND DEFENSE: Non-Infringement of the '031 Patent

Google has not infringed and does not infringe, either directly, contributorily, or by inducement, any valid and enforceable claim of the '031 patent.

THIRD DEFENSE: Non-Infringement of the '276 Patent

Google has not infringed and does not infringe, either directly, contributorily, or by inducement, any valid and enforceable claim of the '276 patent.

FOURTH DEFENSE: Invalidity and/or Enforceability of the '040 Patent

The claims of the '040 patent are invalid for failure to satisfy one or more conditions of patentability set forth in Title 35 of the United States Code, including, but not limited to, 35 U.S.C. §§ 101, 102, 103 and/or 112.

FIFTH DEFENSE: Invalidity and/or Enforceability of the '031 Patent

The claims of the '031 patent are invalid for failure to satisfy one or more conditions of patentability set forth in Title 35 of the United States Code, including, but not limited to, 35 U.S.C. §§ 101, 102, 103 and/or 112.

SIXTH DEFENSE: Invalidity and/or Enforceability of the '276 Patent

The claims of the '276 patent are invalid for failure to satisfy one or more conditions of patentability set forth in Title 35 of the United States Code, including, but not limited to, 35 U.S.C. §§ 101, 102, 103 and/or 112.

SEVENTH DEFENSE: Laches

The doctrine of laches bars PUM from obtaining all, or part, of the relief it seeks. Due to PUM's unreasonable delay in bringing suit, witnesses' memories have faded and relevant documents have been lost, destroyed, or misplaced in the ordinary course of business.

EIGHTH DEFENSE: Lack of Standing

On information and belief, PUM lacks the standing necessary to assert the claims of the '040 patent, '031 patent, and '276 patent against Google.

NINTH DEFENSE: Intervening Rights

Due to PUM's arguments to the PTO during the reexamination of the '040 patent, the doctrine of intervening rights bars PUM from obtaining all, of part, of the relief it seeks.

COUNTERCLAIMS

Pursuant to Rule 13 of the Federal Rules of Civil Procedure, Google Inc. ("Google") for its Counterclaims against Personalized User Model, LLP ("PUM") and Yochai Konig ("Konig"), alleges as follows:

PARTIES

1. Google 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, CA, 94043.
2. PUM alleges that it is a corporation organized and existing under the laws of the state of Texas with its principal place of business in New York, NY.
3. Upon information and belief, Konig is an individual who resides at 2312 Castro Street, San Francisco, California 94131.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over these Counterclaims pursuant to 28 U.S.C. §§ 1331, 1338(a), and 1367.
5. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and by virtue of PUM's admissions in the Amended Complaint that venue is proper in this district.

However, the interests and convenience of the parties, the public, and the courts would be better served by transferring this case to the Northern District of California.

FACTS AND BACKGROUND

A. Konig's Employment at SRI International ("SRI")

6. Konig, who is a named inventor of the '040, '031, and '276 patents ("patents-in-suit")¹, is a former employee of SRI International ("SRI"). SRI is a non-profit research & development organization based in Menlo Park, California that conducts client-sponsored research and development for businesses, government agencies, and private foundations. (See <http://www.sri.com/about/>).

7. Konig began his employment at SRI on or about April 8, 1996. See Ex. A (Employment Agreement between Yochai Konig and SRI International (April 8, 1996)). He ended his employment at SRI on or about August 5, 1999. See Ex. B (Termination Agreement between Yochai Konig and SRI International (August 5, 1999)).

8. By his own admission, Konig worked on "machine learning" projects during his employment at SRI. See Ex. C (Deposition Transcript of Yochai Konig (December 2, 2010)) at 73:5-7. Specifically, Konig's primary project during his employment at SRI was a speech recognition program that could automatically extract features from a conversation and use these features to verify the identity of the speaker. *Id.* at 72:16-23. In his work on this project, Konig reported to the head of SRI's Artificial Intelligence Center. *Id.* at 73:17-18.

9. Konig is currently a limited partner of PUM. See *id.* at 47:9-12. According to the PUM partnership agreement, he is entitled to 50 percent of PUM's profits between \$500,000 and

¹ Google will refer to the '040, '031, and '276 patents as the "patents-in-suit," although PUM has recently stated in written correspondence that it does not intend to continue asserting the '031 patent against Google. At present, the '031 patent still appears in PUM's Complaint.

\$625,000 and 10 percent of PUM's profits above \$625,000. *See* Ex. D (Limited Partnership Agreement of Personalized User Model (P.U.M.) LLP, § 8.1). At the claim construction hearing in this case, König was introduced to the Court as PUM's "representative." Ex. E (Claim Construction Hearing Transcript (January 11, 2011) at 3:9-11).

B. König's Duty to Disclose and Transfer to SRI Any Inventions Made During His Employment, Subject to the Exclusions in Cal. Labor Code Section 2870

10. König's Employment Agreement with SRI included a provision requiring König to disclose and transfer to SRI any "discoveries, improvements, and inventions" that he conceived or made during the period of his employment:

In consideration of my employment at SRI International, I agree . . . 3. To promptly disclose to SRI all discoveries, improvements, and inventions, including software, conceived or made by me during the period of my employment, and I agree to execute such documents, disclose and deliver all information and data, and to do all things which may be necessary, or in the opinion of SRI reasonably desirable, in order to effect transfer of ownership in or to impart a full understanding of such discoveries, improvements and inventions to SRI or its nominee and no other.

See Ex. A at 1.

11. The Employment Agreement also states that König's obligation to disclose and transfer his inventions to SRI "does not apply to an invention which fully qualifies for the exclusion under Section 2870 of the California Labor Code." *Id.* Section 2870 of the California Labor Code, which was attached to König's Employment Agreement, provides that:

Any provision in an employment agreement which provides that an employee shall assign or transfer any of his or her rights in an invention to his or her employer shall not apply to an invention for which no equipment, supplies, facility, or trade secret information of the employer was used and which was developed entirely on the employee's own time, and (a) which does not relate (1) to the business of the employer or (2) to the employer's actual or demonstrably anticipated research or development, or (b) which does not result from any work performed by the employee for the employer.

C. PUM Alleges That Konig Conceived the Inventions of the Patents-In-Suit and/or Reduced Them to Practice During His Employment at SRI

12. PUM has claimed, in its interrogatory responses in this action, that “the inventions claimed in the patents-in-suit were conceived and/or reduced to practice by Roy Twersky and Yochai Konig *no later than July 1999.*” See Ex. F (Eleventh Supplemental Responses to Defendant Google Inc.’s First Set of Interrogatories (December 1, 2010)) at 5 (emphasis added). In this same interrogatory response, PUM stated that “the conception and reduction to practice of the patented invention are reflected in documents that have been produced to date, including by way of example but not limited to PUM0042214, *which was created July 13, 1999*, and modified July 15, 1999; [and] PUM0042165, *which was created July 13, 1999 . . .*”² *Id.* (emphasis added). Thus, according to PUM, Konig conceived and/or reduced to practice the inventions of the patents-in-suits during July 1999 – at the time Konig was employed by SRI.

D. The Inventions of the Patents-In-Suit Relate to SRI’s Business and Resulted from Konig’s Work for SRI

13. As noted above, the obligation in Konig’s Employment Agreement to disclose and assign inventions to SRI does not apply to inventions that fully qualify for exclusion under Cal. Labor Code Section 2870. The inventions of the patents-in-suit do not qualify for exclusion under Section 2870.

14. First, the inventions of the patents-in-suit relate to SRI’s business, actual or demonstrably anticipated research, and/or development. As disclosed on its website, SRI’s research and development focuses heavily on the areas of computers and artificial intelligence. (See http://www.sri.com/focus_areas/computing.html; <http://www.ai.sri.com/about/>). Indeed,

² The two documents bearing Bates numbers PUM0042214 and PUM0042165 are attached to this pleading as Exhibits G and H.

SRI's Artificial Intelligence Center, formed in 1966, currently houses nearly 100 scientists and researchers. (See <http://www.ai.sri.com/about/>).

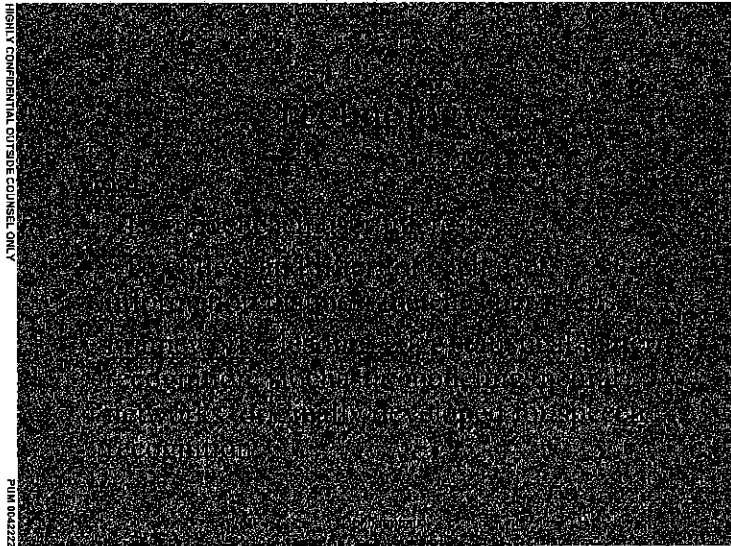
15. Just as computers and artificial intelligence are the focus of SRI's research and development, computers and artificial intelligence are at the heart of the patents-in-suit. For instance, Claim 1 of the '040 patent discloses "estimating parameters of learning machine" and "applying the identified properties of the document to the learning machine." See '040 patent at Claim 1(c), (e). The '031 and '276 patents have similar or identical "learning machine" language in their claims. See '031 patent at Claim 1(c), (e) (disclosing identical "learning machine" elements as Claim 1 of the '040 patent); '276 patent at Claim 1(f) (disclosing the step of "applying the identified properties of the retrieved document to the user-specific learning machine."). By virtue of this "learning machine," the patents-in-suit are within the field of artificial intelligence.

16. The patents-in-suit also fall within the field of computers, as the Abstract for each patent discloses "A method for providing automatic, personalized information services to a computer user . . ." Thus, the patents-in-suit relate to the same subjects (*i.e.*, computers and artificial intelligence) that are a focus of SRI's actual and/or demonstrably anticipated research and development.

17. The inventions of the patents-in-suit also resulted from Konig's work for SRI. Konig admitted during deposition that his work at SRI involved "machine learning," which is the subject-matter of the patents-in-suit. See Ex. C (Deposition Transcript of Yochai Konig (December 2, 2010)) at 73:5-7.

18. More specifically, Konig worked on speech-recognition technology for SRI, *supra* at ¶ 8, and the July 1999 documents – which PUM asserts show the conception of the

patents-in-suits – state that the patented inventions use technology “originally developed for speech recognition”:



(Ex. G at 9, Ex. H at 9.) This document shows that not only did König’s work at SRI relate to the patents, the patents resulted from that work. Furthermore, all three patents expressly discuss “speech recognition software” (*see* ‘040 patent at 18:5; ‘031 patent at 18:17; ‘276 patent at 17:58), which even more closely links these patents to König’s speech-recognition work at SRI.

19. A Utopy technology White Paper further demonstrates that the patented invention relates not only to the field of speech recognition, but the specific area to which König's work at SRI pertained: “Utopy applies its bleeding-edge expertise in stochastic modeling and machine learning technologies drawn from speech recognition and *speaker verification research* to a new and relatively unexplored problem within the search and Information Retrieval (IR) tasks, namely Personal Search.” Ex. I at 3 (emphasis added); *see also* Ex. J (January 30, 1999 email from Yochai König to Andreas Stolke, discussing König's work in “speaker verification” at SRI). This also shows that not only did König’s work at SRI relate to the patents, the patents resulted from that work.

20. Various emails that Konig authored during his work at SRI also discuss the same concepts and methods that were later the subject of the patents-in-suit. For instance, in a January 1999 email to an SRI co-worker, Konig explained that his work at SRI “was centered around a data-driven approach for feature extraction for pattern recognition . . . we optimize the feature extraction process to increase the posterior probability of the correct sentence . . .” Ex. J (e-mail from Yochai Konig to Andreas Stolcke (Jan. 30, 1999)). In another email, Konig explained that the feature extractor he was developing was “data-driven in the sense that the extractor parameters are automatically estimated from (development) data, rather than being constrained to perform a specific function (e.g. spectral analysis).” (Ex. K (email from Yochai Konig to Mitch Weintraub (June 8, 1998))).

21. These concepts – *i.e.*, automatically estimating parameters from a set of data in order to estimate the probability of a particular outcome – are also a subject matter of the patents-in-suit. *See, e.g.*, ‘040 patent at 8:46-50 (“Personal web 12 stores parameters that define a User Model 13 for each user, and the parameters are continually updated based on monitored user interactions while the user is engaged in normal use of a computer”); Claim 1 (disclosing a method that includes the step of “estimating parameters of a learning machine . . . wherein the parameters are estimated in part from the user-specific data files”); Claim 11 (disclosing that the claimed method can be used to “estimat[e] a posterior probability $P(u/d, q)$ that the document d is of interest to the user u , given a query q submitted by the user.”) Thus, Konig’s emails further show that not only did his work at SRI relate to the patents, the patents resulted from that work.

E. Konig’s Failure to Disclose and Transfer the Inventions of the Patents-in-Suit to SRI

22. Based on PUM’s assertion that Konig conceived and reduced to practice the patented inventions during the period of his employment at SRI, and because these inventions do

not qualify for exclusion under Section 2870, Konig had a duty to disclose and transfer these inventions to SRI. However, Konig never did so. Instead, after leaving SRI in August 1999, Konig formed another company (Utopy, Inc.) in December 1999. That same month, he filed the provisional application that eventually matured into the patents-in-suit. He assigned the application to Utopy – not SRI – on June 15, 2000.

F. Google’s Acquisition of SRI’s Rights to the Patents-In-Suit

23. On January 18, 2011, Google entered into a Purchase Agreement with SRI. A true and correct copy of this Purchase Agreement is attached hereto as Exhibit L. Through this Purchase Agreement, Google acquired all rights that SRI possessed in the patents-in-suit, including “any perfected or unperfected claims of ownership that [SRI] may have” in the patents-in-suit. *See id.* at § 4.1. Google also acquired “all . . . causes of action (whether known or unknown or whether currently pending, filed, or otherwise) and other enforcement rights under, or on account of, any of the Patents[-in-suit].” *Id.* at § 4.2(c).

COUNT I: Declaratory Judgment of Non-Infringement of the ‘040 Patent

24. Google incorporates the allegations in paragraphs 1 through 15 of the answer and defenses herein and paragraphs 1 through 23 of these counterclaims as if fully set forth herein.

25. PUM claims to be the owner of the ’040 patent.

26. PUM has initiated a civil action against Google by filing the Amended Complaint in this Court alleging that Google has infringed one or more claims of the ’040 patent.

27. Google has not infringed and does not infringe any valid and enforceable claim of the ’040 patent.

COUNT II: Declaratory Judgment of Non-Infringement of the ‘031 Patent

28. Google incorporates the allegations in paragraphs 1 through 15 of the answer and defenses herein and paragraphs 1 through 27 of these counterclaims as if fully set forth herein.

29. PUM claims to be the owner of the '031 patent.

30. PUM has initiated a civil action against Google by filing the Amended Complaint in this Court alleging that Google has infringed one or more claims of the '031 patent.

31. Google has not infringed and does not infringe any valid and enforceable claim of the '040 patent.

COUNT III: Declaratory Judgment of Non-Infringement of the '276 Patent

32. Google incorporates the allegations in paragraphs 1 through 15 of the answer and defenses herein and paragraphs 1 through 31 of these counterclaims as if fully set forth herein.

33. PUM claims to be the owner of the '276 patent.

34. PUM has initiated a civil action against Google by filing the Amended Complaint in this Court alleging that Google has infringed one or more claims of the '276 patent.

35. Google has not infringed and does not infringe any valid and enforceable claim of the '276 patent.

COUNT IV: Declaratory Judgment of Invalidity and/or Unenforceability of the '040 Patent

36. Google incorporates the allegations in paragraphs 1 through 15 of the answer and defenses herein and paragraphs 1 through 35 of these counterclaims as if fully set forth herein.

37. The '040 patent is invalid for failure to satisfy one or more of the conditions of patentability set forth in Part II of Title 35 of the United States Code, including, but not limited to, 35 U.S.C. §§ 101, 102, 103 and/or 112.

COUNT V: Declaratory Judgment of Invalidity and/or Unenforceability of the '031 Patent

38. Google incorporates the allegations in paragraphs 1 through 15 of the answer and defenses herein and paragraphs 1 through 37 of these counterclaims as if fully set forth herein.

39. The '031 patent is invalid for failure to satisfy one or more of the conditions of patentability set forth in Part II of Title 35 of the United States Code, including, but not limited to, 35 U.S.C. §§ 101, 102, 103 and/or 112.

COUNT VI: Declaratory Judgment of Invalidity and/or Unenforceability of the '276 Patent

40. Google incorporates the allegations in paragraphs 1 through 15 of the answer and defenses herein and paragraphs 1 through 39 of these counterclaims as if fully set forth herein.

41. The '276 patent is invalid for failure to satisfy one or more of the conditions of patentability set forth in Part II of Title 35 of the United States Code, including, but not limited to, 35 U.S.C. §§ 101, 102, 103 and/or 112.

COUNT VII: Declaration that Google is a Rightful Co-Owner of the Patents-In-Suit

42. Google incorporates the allegations in paragraphs 1 through 15 of the answer and defenses herein and paragraphs 1 through 41 of these counterclaims as if fully set forth herein.

43. PUM contends that Konig conceived of the invention in the patents-in-suit, and reduced this invention to practice, during a time period when he was employed by SRI. Furthermore, this invention relates to SRI's business, demonstrably anticipated research, and/or development and resulted from Konig's work for SRI.

44. Pursuant to the Employment Agreement between Konig and SRI, Konig was contractually obligated to assign any inventions conceived or made during his employment at SRI. PUM asserts that the inventions of the patents-in-suit were conceived by Konig while he was employed by SRI. *See* Ex. F at 5 (“the inventions claimed in the patents-in-suit were conceived and/or reduced to practice by Roy Twersky and Yochai Konig no later than July 1999.”) By virtue of Konig's contractual obligation, SRI was a rightful co-owner of the patents-in-suit.

45. Pursuant to the Purchase Agreement between Google and SRI, Google acquired SRI's ownership rights in the patents-in-suit on January 18, 2011.

46. Accordingly, the Court should declare that SRI was a rightful co-owner of the patents-in-suit through until January 18, 2011, and that Google is now a rightful co-owner of the patents-in-suit, and also now owns any and all of SRI's rights related thereto.

COUNT VIII: Breach of Contract (Against Konig)

47. Google incorporates the allegations in paragraphs 1 through 15 of the answer and defenses herein and paragraphs 1 through 46 of these counterclaims as if fully set forth herein.

48. The Employment Agreement between Konig and SRI constitutes a written, valid, and binding contract between Konig and SRI.

49. Pursuant to this Employment Agreement, Konig had a duty to transfer ownership to SRI of any inventions that he conceived or made during the time of his employment at SRI. As noted above, PUM contends that Konig conceived and reduced to practice the inventions of the patents-in-suit while he was employed at SRI. *See* Ex. F at 5 ("the inventions claimed in the patents-in-suit were conceived and/or reduced to practice by Roy Twersky and Yochai Konig no later than July 1999.") Accordingly, Konig breached his contractual duty to SRI by failing to assign his interest in the patents-in-suit to SRI.

50. This breach of contract has directly caused damage to Google, which now holds the ownership rights to the patents-in-suit that the Employment Agreement had previously granted to SRI.

COUNT IX: Conversion (Against Konig and PUM)

51. Google incorporates the allegations in paragraphs 1 through 15 of the answer and defenses herein and paragraphs 1 through 50 of these counterclaims as if fully set forth herein.

52. Google is a rightful co-owner of the patents-in-suit and any inventions claimed therein, having purchased the ownership rights previously held by SRI.

53. Konig purported to transfer the applications which matured into the patents-in-suit, without SRI's consent. PUM purported to obtain the patents-in-suit, again without SRI's consent. Both Konig and PUM's actions constituted wrongful acts or dispositions of SRI's property, in violation of SRI's ownership rights.

54. Google, as the entity who has acquired SRI's rights to the patents-in-suit and all causes of action arising under these patents, has been injured by Konig's and PUM's actions, in an amount to be proven at trial. Google is also entitled to the return of all rights and interest in the patents-in-suit which Konig and PUM wrongfully converted.

COUNT X: Imposition of Constructive Trust (against Konig and PUM)

55. Google incorporates the allegations in paragraphs 1 through 15 of the answer and defenses herein and paragraphs 1 through 54 of these counterclaims as if fully set forth herein.

56. Under Konig's Employment Agreement, he held his rights to the patents-in-suit, and any inventions disclosed therein, in trust for SRI. Following Google's purchase of SRI's rights to the patents-in-suit, Konig holds these rights in trust for Google. Although Konig purported to assign the applications which matured into the patents-in-suit to Utopy, Inc., Konig had no right to make this assignment. PUM has adopted, ratified, and benefited from Konig's wrongful conduct by purporting to obtain the patents-in-suit.

57. Because of the wrongful manner in which PUM acquired Konig's purported rights to the patents-in-suit, PUM is not the legal or equitable owner of such rights, or any income or benefits derived from them. Rather, PUM is an involuntary trustee holding such rights, and any profits or income therefrom, in constructive trust for Google, with a duty to convey the same to Google.

EXCEPTIONAL CASE

58. On information and belief, this is an exceptional case entitling Google to an award of its attorneys' fees incurred in connection with defending and prosecuting this action pursuant to 35 U.S.C. § 285, as a result of, *inter alia*, PUM's assertion of the '040, '031, and '276 patents against Google with the knowledge that Google does not infringe any valid or enforceable claim of these patents and/or that these patents are invalid and/or unenforceable. This is also an exceptional case entitling Google to an award of its attorneys' fees incurred in connection with defending and prosecuting this action pursuant to 35 U.S.C. § 285, as a result of, *inter alia*, PUM's assertion of the '040, '031, and '276 patents against Google with the knowledge that Google is a rightful co-owner of these same patents.

RELIEF REQUESTED

WHEREFORE, Google respectfully requests the following relief:

1. A judgment in favor of Google denying PUM all relief requested in this action and dismissing PUM's Amended Complaint for patent infringement with prejudice;
2. A judgment declaring that each claim of the '040, '031 patent, and '276 patent is invalid and/or unenforceable;
3. A judgment declaring that Google has not infringed and is not infringing any valid and/or enforceable claim of the '040 patent, '031 patent, or '276 patent, and that Google has not contributed to or induced and is not contributing to or inducing infringement of any valid and enforceable claim of the '040 patent, '031 patent, or '276 patent;
4. A judgment declaring that Google has not willfully infringed and is not willfully infringing any valid and/or enforceable claim of the '040 patent, '031 patent, or '276 patent;

5. A judgment declaring that SRI was a rightful co-owner of the '040 patent, '031 patent, and '276 patent until January 18, 2011, and that Google is now a rightful co-owner of these patents;
6. An award of compensatory and punitive damages to Google for Konig's breach of contract, in an amount to be proven at trial;
7. An award of compensatory and punitive damages to Google for Konig's and PUM's conversion of Google's property, in an amount to be proven at trial;
8. Injunctive relief, in the form of an imposition of a constructive trust and an order requiring Konig and PUM to transfer to Google any interest which Konig possessed or purported to possess in the '040 patent, the '031 patent, and the '276 patent;
9. An order for an accounting of all fees, royalties, or other compensation received by PUM or Konig based on Konig's purported former ownership interest in the patents-in-suit, and the imposition of a constructive trust over any such fees, royalties, or other compensation in favor of Google;
10. A judgment declaring this to be an exceptional case under 35 U.S.C. § 285 and awarding Google its costs, expenses, and reasonable attorneys' fees; and
11. That the Court award Google such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

In accordance with Fed. R. Civ. P. 38(b), Google demands a trial by jury on all issues so triable.

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Attorneys for Defendant Google Inc.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CERTIFICATE OF SERVICE

I, David E. Moore, hereby certify that on December 23, 2011, the attached document was electronically filed with the Clerk of the Court using CM/ECF which will send notification to the registered attorney(s) of record that the document has been filed and is available for viewing and downloading.

I further certify that on December 23, 2011, the attached document was Electronically

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