

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

NOKIA CORPORATION,

Plaintiff,

v.

APPLE INC.,

Defendant.

APPLE INC.

Counterclaim-Plaintiff,

v.

NOKIA CORPORATION and NOKIA INC.

Counterclaim-Defendants.

C.A. No. 09-791-GMS

JURY TRIAL DEMANDED

**APPLE INC.'S UNOPPOSED MOTION FOR LEAVE TO
FILE ITS FOURTH AMENDED ANSWER, DEFENSES, AND COUNTERCLAIMS**

Defendant and Counterclaim-Plaintiff Apple Inc. (“Apple”), pursuant to Federal Rule of Civil Procedure 15(a) and D. Del. LR 15.1, moves for leave to file its Fourth Amended Answer, Defenses, and Counterclaims. Specifically, Apple seeks to amend its Third Amended Answer, Defenses, and Counterclaims to assert: (1) defenses that U.S. Patent Nos. 6,359,904 (“’904”) and 5,802,465 (“’465”) are unenforceable because they were obtained through inequitable and fraudulent conduct before the U.S. Patent and Trademark Office (“Patent Office”); (2) related counterclaims for a declaratory judgment that the ‘904 and ‘465 Patents are unenforceable; and (3) related supplements to its counterclaim for violations of the Sherman Antitrust Act, 15 U.S.C. § 2.

Apple's Motion complies with the Court's April 15, 2011 deadline to amend pleadings to add inequitable conduct, and Apple's new defenses and counterclaims could not have been plead earlier because they are based on information that was uniquely in Nokia's possession, and that Nokia did not produce until very recently. (D.I. 42.) The amendments are therefore timely.

Apple also has good cause for each of its proposed amendments. In particular, recent discovery from Nokia has confirmed the following bases for inequitable conduct defenses:

- With respect to the '904 patent, applicants failed to disclose a public ETSI proposal by Ericsson, dated October 16-18, 1996 ("Ericsson Proposal"), which is highly material to the patentability of the '904 patent.
- With respect to the '465 patent, applicants failed to disclose documents describing the "IMSI attach" function described in the 1991 GSM standard, which is highly similar to the GPRS "attach" function that is a focus of Nokia's infringement contentions.

Granting this motion would not cause any prejudice to Nokia because Apple does not seek to add defenses that will require any further discovery by Nokia.

Nokia does not oppose Apple's Motion.

Pursuant to D. Del. LR 15.1, Apple attaches a copy of its proposed Fourth Amended Answer, Defenses, and Counterclaims and a blackline indicating in what respects it differs from Apple's Third Amended Answer and Counterclaims (Exhibits 1 and 2 hereto).

Respectfully submitted,

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Dated: March 9, 2011
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CERTIFICATE OF SERVICE

I, David E. Moore, hereby certify that on March 9, 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 hereby certify that on March 9, 2011, the attached document was electronically mailed to the following person(s)

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