

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

COOPER NOTIFICATION, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 09-865 (JJF)
	)	
TWITTER, INC.; EVERBRIDGE INC.;	)	
RAVE WIRELESS INC.; and FEDERAL	)	
SIGNAL CORP.	)	
Defendants.	)	

**ANSWER TO AMENDED COMPLAINT**

Defendant Rave Wireless Inc. (“RAVE”) hereby responds to Cooper Notification, Inc.’s (“Cooper’s”) Amended Complaint, filed January 8, 2010 (“Complaint”), as follows:

**The Parties**

1. RAVE lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Complaint, and therefore denies them.
2. RAVE lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Complaint, and therefore denies them.
3. RAVE lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the Complaint, and therefore denies them.
4. RAVE admits that it is a Delaware corporation. RAVE denies that its corporate headquarters are at 225 East 6<sup>th</sup> Street, New York, New York 10003.
5. RAVE lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the Complaint, and therefore denies them.

**Jurisdiction and Venue**

6. RAVE admits that this action arises under 35 U.S.C. § 101 *et seq.*, and that this Court has jurisdiction over the subject matter of this action.

7. RAVE denies that it has committed any act of infringement in this or any judicial district. RAVE admits that it is subject to personal jurisdiction and that venue is proper in this district. Except as so expressly admitted or denied, RAVE lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 7 of the Complaint, and therefore denies them.

#### **Plaintiff's Patent**

8. RAVE admits that a copy of U.S. Patent No. 7,409,428 ("the '428 patent") was attached as Exhibit A to the Complaint. RAVE further admits that this copy states on its face that: (a) it is entitled "Systems and Methods for Messaging to Multiple Gateways"; (b) it was issued on August 5, 2008; (c) the listed inventors are Frantisek Brabec, David R. Drescher, Daniel D. Park, and Richard A. Tiene; and (4) the listed assignee is Cooper Technologies Company. Except as so expressly admitted, RAVE lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 8 of the Complaint, and therefore denies them.

9. RAVE admits that the '428 patent is entitled "Systems and Methods for Messaging to Multiple Gateways." RAVE lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 9 of the Complaint, and therefore denies them.

#### **FIRST CAUSE OF ACTION**

10. RAVE incorporates by reference, as though fully set forth herein, its responses to paragraphs 1 through 9 above.

11. RAVE lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the Complaint, and therefore denies them.

12. RAVE lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the Complaint, and therefore denies them.

13. RAVE lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the Complaint, and therefore denies them.

## **SECOND CAUSE OF ACTION**

14. RAVE incorporates by reference, as though fully set forth herein, its responses to paragraphs 1 through 9 above.

15. RAVE lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Complaint, and therefore denies them.

16. RAVE lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Complaint, and therefore denies them.

17. RAVE lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Complaint, and therefore denies them.

## **THIRD CAUSE OF ACTION**

18. RAVE incorporates by reference, as though fully set forth herein, its responses to paragraphs 1 through 9 above.

19. RAVE denies the allegations of paragraph 19.

20. RAVE denies the allegations of paragraph 20.

21. RAVE denies the allegations of paragraph 21.

## **FOURTH CAUSE OF ACTION**

22. RAVE incorporates by reference, as though fully set forth herein, its responses to paragraphs 1 through 9 above.

23. RAVE lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Complaint, and therefore denies them.

24. RAVE lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Complaint, and therefore denies them.

25. RAVE lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Complaint, and therefore denies them.

## **PRAYER FOR RELIEF**

RAVE denies that Cooper is entitled to any of the relief requested.

### **DEMAND FOR JURY TRIAL**

RAVE admits that Cooper requests a trial by jury.

### **AFFIRMATIVE AND OTHER DEFENSES**

By way of further answer, as Affirmative Defenses to the Complaint, and without assuming any burden that it would not otherwise have, RAVE states as follows:

#### **FIRST AFFIRMATIVE DEFENSE**

##### **(Invalidity of the '428 Patent)**

26. Each asserted claim of the '428 patent is invalid for failure to comply with one or more of the requirements of United States Code, Title 35, including without limitation, 35 U.S.C. §§ 101, 102, 103, and 112.

#### **SECOND AFFIRMATIVE DEFENSE**

##### **(Noninfringement of the '428 Patent)**

27. RAVE has not infringed, contributed to the infringement of, or actively induced others to infringe, and does not infringe, contribute to the infringement of, or actively induce others to infringe, any claim of the '428 patent, directly or indirectly, literally or under the doctrine of equivalents.

#### **THIRD AFFIRMATIVE DEFENSE**

##### **(Waiver and/or Equitable Estoppel)**

28. The patents-in-suit are unenforceable by reason of the doctrine of waiver and/or equitable estoppel.

#### **FOURTH AFFIRMATIVE DEFENSE**

##### **(Limitation on Damages)**

29. Cooper's claim for damages is barred, in whole or in part, by 35 U.S.C. § 287 and/or Cooper's failure to plead notice thereunder.

## **FIFTH AFFIRMATIVE DEFENSE**

### **(Inequitable Conduct)**

30. On information and belief, the '428 patent is unenforceable due to inequitable conduct on the part of the applicant for the '428 patent.

31. On information and belief, the applicant for the '428 patent knew of the REACTec<sup>TM</sup> system (also sometimes referred to as REACT<sup>TM</sup>) sold, offered for sale by the applicant, and/or in public use more than one year before the filing of the provisional applications by the applicant for the '428 patent.

32. On information and belief, the REACTec<sup>TM</sup> system is highly material to the patentability of the '428 patent.

33. On information and belief, there is a substantial likelihood that a reasonable patent examiner would consider the REACTec<sup>TM</sup> system important in deciding whether to allow the application to issue as the '428 patent.

34. On information and belief, the applicant failed to cite the REACTec<sup>TM</sup> system to the U.S. Patent & Trademark Office during the prosecution of the applications that led to the '428 patent.

35. On information and belief, the failure of the applicant to cite the REACTec<sup>TM</sup> system to the U.S. Patent & Trademark Office was done with deceptive intent.

36. On information and belief, the applicant for the '428 patent knew of the RoaMail<sup>TM</sup> system sold, offered for sale by the applicant, and/or in public use more than one year before the filing of the provisional applications by the applicant for the '428 patent.

37. On information and belief, the RoaMail<sup>TM</sup> system is highly material to the patentability of the '428 patent.

38. On information and belief, there is a substantial likelihood that a reasonable patent examiner would consider the RoaMail<sup>TM</sup> system important in deciding whether to allow the application to issue as the '428 patent.

39. On information and belief, the applicant failed to cite the RoaMail <sup>TM</sup> system to the U.S. Patent & Trademark Office during the prosecution of the applications that led to the '428 patent.

40. On information and belief, the failure of the applicant to cite the RoaMail <sup>TM</sup> system to the U.S. Patent & Trademark Office was done with deceptive intent.

### **RESERVATION OF ADDITIONAL AFFIRMATIVE DEFENSES**

RAVE reserves the right to assert additional defenses in the event that discovery or other analysis indicates that additional affirmative defenses are appropriate.

### **COUNTERCLAIMS**

RAVE, as and for its Counterclaim against Cooper, alleges:

41. RAVE restates and realleges the allegations set forth in paragraphs 1 through 40 above. This is an action by defendant and counterclaimant RAVE pursuant to Rule 13 of the Federal Rules of Civil Procedure for declaration of non-infringement, invalidity, and unenforceability of United States Patent Nos. 7,409,428 ("the '428 patent"). For its counterclaims against Cooper, RAVE alleges, based upon personal knowledge as to all acts or events that it has undertaken or witnessed, and upon information and belief as to all others, as follows:

### **JURISDICTION AND VENUE**

42. These counterclaims seek declaratory and injunctive relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. Because these counterclaims arise under the patent laws of the United States, set forth at 38 U.S.C. § 101 *et seq*, the Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338.

43. Personal jurisdiction exists over plaintiff and counterdefendant Cooper because, *inter alia*, Cooper has submitted itself to the jurisdiction of this Court by filing its Complaint against RAVE.

44. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400.

## **THE PARTIES**

45. Counterclaimant RAVE is a corporation organized under the laws of the State of Delaware with its principal place of business at 50 Speen Street, Suite 301, Framingham, Massachusetts 01701.

46. Based on Counterdefendant Cooper's assertion in its Complaint, RAVE alleges on information and belief that Cooper is a corporation organized under the laws of the State of Delaware with its principal place of business at 7565 Commerce Court, Sarasota, Florida 34243.

## **FIRST COUNTERCLAIM**

### **(Declaratory Judgment of Noninfringement of the '428 Patent)**

47. Based on Cooper's filing of this suit and RAVE's affirmative defenses, an actual controversy has arisen and now exists between RAVE and Cooper as to whether RAVE infringes the '428 patent.

48. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, RAVE requests the declaration of the Court that RAVE does not infringe and has not infringed, literally or by equivalents, directly or by inducement or contributory infringement, any claim of the '428 patent.

## **SECOND COUNTERCLAIM**

### **(Declaratory Judgment of Invalidity and Unenforceability of the '428 Patent)**

49. Based on Cooper's filing of this suit and RAVE's affirmative defenses, an actual controversy has arisen and now exists between RAVE and Cooper as to the validity and enforceability of the '428 patent.

50. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, RAVE requests the declaration of the Court that the '428 patent is invalid and not enforceable.

## **THIRD COUNTERCLAIM**

### **(Exceptional Case)**

51. On information and belief, prior to filing its complaint, Cooper knew, or reasonably should have known, that the patent claims were invalid, unenforceable and/or not

infringed by RAVE or that its claims were barred in whole or in part. Cooper's filing of the complaint and Cooper pursuing its present claims in view of this knowledge makes this case exceptional within the meaning of 35 U.S.C. § 285.

### **JURY DEMAND**

52. Pursuant to Local Rule CV 38(a) and Fed. R. Civ. P. 38, defendant and counterclaimant RAVE hereby demands a trial by jury on all issues so triable in this action.

### **PRAYER FOR RELIEF ON COOPER'S COMPLAINT**

WHEREFORE, RAVE asks this Court to enter judgment in RAVE's favor against Cooper by granting the following relief:

- A. Rejection of Cooper's accusations that any RAVE product, or use of any RAVE product in any way, infringes the '428 patent;
- B. Denial of Cooper's request for an injunction on the '428 patent;
- C. Denial of Cooper's request for damages on the '428 patent;
- D. Denial of Cooper's request that this case be declared exceptional and that Cooper be awarded attorneys' fees and costs;
- E. Denial of Cooper's request for other or further relief;
- F. Dismissal of Cooper's claims on the '428 patent with prejudice and that Cooper take nothing therefrom;
- G. That Cooper and all persons acting on its behalf or in concert with it be permanently enjoined and restrained from charging, orally or in writing, that the '428 patent are infringed by RAVE, directly or indirectly; and
- H. An award to RAVE of its reasonable attorneys' fees and costs and such other and further relief as the Court finds just and proper.

### **PRAYER FOR RELIEF ON RAVE'S COUNTERCLAIMS**

WHEREFORE, RAVE asks this Court to enter judgment in RAVE's favor against Cooper by granting the following relief:



A. A declaration that RAVE has not infringed any claim of the '428 patent under any subsection of 35 U.S.C. § 271;

B. A declaration that all claims of the '428 patent invalid under 35 U.S.C. §§ 101, 102, 103, and/or 112;

C. A declaration that all claims of the '428 patent are unenforceable due to inequitable conduct;

D. An order enjoining Cooper and its respective officers, partners, employees, agents, parents, subsidiaries, and affiliates from suing or threatening to sue for infringement of any of the patents-in-suit on the basis of the making, using, selling, offering for sale or importing of any RAVE products; and

E. An award to RAVE of its reasonable attorneys' fees and costs and such other and further relief as the Court finds just and proper.

Dated: March 19, 2010

STAMOULIS & WEINBLATT LLC

/s/ Stamatios Stamoulis  
Stamatios Stamoulis (No. 4606)  
Richard C. Weinblatt (No. 5080)  
Two Fox Point Centre  
6 Denny Road, Suite 307  
Wilmington, DE 19800  
(302) 999-1540  
stamoulis@swdelaw.com  
weinblatt@swdelaw.com

*Attorneys for Rave Wireless Inc.*

## CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of March, 2010, the attached FRCP 7.1 Disclosure Statement was electronically filed with the Clerk of the Court using CM/ECF. I further certify that I caused the foregoing documents to served upon the below-named counsel of record by electronic mail.

Philip A. Rovner, Esquire  
Potter Anderson & Corroon LLP  
Hercules Plaza, 6th Floor  
1313 N. Market Street  
Wilmington, DE 19899

Paul J. Andre, Esquire  
King & Spalding LLP  
333 Twin Dolphin Drive  
Suite 400  
Redwood City, CA 94065

Frederick L. Cottrell, III, Esquire  
Richard, Layton & Finger  
One Rodney Square  
920 North King Street  
Wilmington, DE 19801

John W. Shaw  
Young Conaway Stargatt & Taylor, LLP  
The Brandywine Building  
1000 West Street, 17th Floor  
Wilmington, DE 19801

Edward A. Cavazos, Esquire  
Bracewell & Giuliani LLP  
111 Congress Avenue, Suite 2300  
Austin, TX 78701

John G. Day  
Ashby & Geddes  
500 Delaware Avenue, 8th Floor  
P.O. Box 1150 Wilmington, DE 19899

Lynn H. Pasahow  
Fenwick & West LLP  
801 California Street  
Mountain View, CA 94041

By: /s/ Stamatios Stamoulis  
Stamatios Stamoulis