IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

APPLE INC., *Plaintiff,* vs. HIGH TECH COMPUTER CORP. A/K/A HTC CORP., HTC (B.V.I.) CORP., HTC AMERICA, INC., EXEDEA, INC., *Defendants.*	)	CA No. 10-167-GMS JURY TRIAL DEMANDED

PLAINTIFF APPLE INC.'S REPLY TO THE COUNTERCLAIMS OF DEFENDANTS HIGH TECH COMPUTER CORP. A/K/A/ HTC CORP., HTC (B.V.I.) CORP., HTC AMERICA, INC., AND EXEDEA, INC.

Plaintiff Apple Inc. ("Apple"), for its Reply to the Counterclaims of Defendants High Tech Computer Corp. a/k/a/ HTC Corp. ("HTC Corp."), HTC (B.V.I.) Corp. ("HTC BVI"), HTC America, Inc. ("HTC America"), and Exedea, Inc. ("Exedea") (collectively, "Defendants"), hereby states as follows:

PARTIES

1. Upon information and belief, Apple admits the allegations in Counterclaim Paragraph 1.

2. Upon information and belief, Apple admits the allegations in Counterclaim Paragraph 2.

3. Upon information and belief, Apple admits the allegations in Counterclaim Paragraph 3.

4. Upon information and belief, Apple admits the allegations in Counterclaim Paragraph 4.

5. Apple admits the allegations in Counterclaim Paragraph 5.

JURISDICTION AND VENUE

6. Apple admits that Defendants' counterclaims purport to arise under the patent laws of the United States, 35 U.S.C. §§ 100 *et seq.*, and/or the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, but denies that there is any factual or legal basis for any of Defendants' counterclaims. Apple further admits that, as a Federal District Court, this Court has subject matter jurisdiction over Defendants' counterclaims. Except as expressly admitted, Apple denies the allegations in Counterclaim Paragraph 6.

7. Apple admits the allegations in Counterclaim Paragraph 7.

NATURE OF THE ACTION

8. Apple admits that Defendants' counterclaims purport to arise under the patent laws of the United States, 35 U.S.C. §§ 100 *et seq.*, and that certain of Defendants' counterclaims purport to arise under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, but denies that there is any factual or legal basis for any of Defendants' counterclaims. Apple further admits that Defendants purport to seek a declaratory judgment that U.S. Patent Nos. 7,362,331 (the "'331 Patent"), 7,479,949 (the "'949 Patent"), 7,469,381 (the "'381 Patent"), 5,920,726 (the "'726 Patent"), 7,633,076 (the "'076 Patent"), 5,848,105 (the "'105 Patent"), 5,455,599 (the "'599 Patent"), and 6,424,354 (the "'354 Patent"), and each of the claims thereof, are invalid and not infringed, but denies that any of these patents or claims are invalid or not infringed. Apple further admits that Defendants purport to seek remedies for Apple's alleged infringement of U.S.

Patent Nos. 7,278,032 (the "'032 Patent"), 5,377,354 (the "HTC '354 Patent"),[1] and 6,188,578 (the "'578 Patent"), but denies that Apple has infringed any of these patents or that Defendants are entitled to any relief. Except as expressly admitted, Apple denies the allegations in Counterclaim Paragraph 8.

9. Apple admits that Defendants purport to seek a declaratory judgment that the claims of the '726 Patent are unenforceable due to alleged inequitable conduct before the United States Patent and Trademark Office ("USPTO"), but denies that the '726 Patent is unenforceable due to inequitable conduct or otherwise. Except as expressly admitted, Apple denies the allegations in Counterclaim Paragraph 9.

10. Apple admits that an actual controversy exists between Apple and Defendants concerning Defendants' infringement of the '331 Patent, the '949 Patent, the '381 Patent, the '726 Patent, the '076 Patent, the '105 Patent, the '599 Patent, and the '354 Patent, but states that all patents are infringed, valid, and enforceable.

COUNT I

(DECLARATORY JUDGMENT OF ALLEGED INVALIDITY OF THE '331 PATENT)

11. Apple repeats its responses to Counterclaim Paragraphs 1-10 as if fully set forth herein.

12. Apple denies the allegations in Counterclaim Paragraph 12.

13. Apple denies the allegations in Counterclaim Paragraph 13.

[1] In order to distinguish it from the '354 Patent that Apple is asserting against Defendants in this action, the '354 patent that HTC Corp. is asserting against Apple is referred to herein as the "HTC '354 Patent."

COUNT II

(DECLARATORY JUDGMENT OF ALLEGED NONINFRINGEMENT OF THE '331 PATENT)

14. Apple repeats its responses to Counterclaim Paragraphs 1-13 as if fully set forth herein.

15. Apple denies the allegations in Counterclaim Paragraph 15.

16. Apple denies the allegations in Counterclaim Paragraph 16.

COUNT III

(DECLARATORY JUDGMENT OF ALLEGED INVALIDITY OF THE '949 PATENT)

17. Apple repeats its responses to Counterclaim Paragraphs 1-16 as if fully set forth herein.

18. Apple denies the allegations in Counterclaim Paragraph 18.

19. Apple denies the allegations in Counterclaim Paragraph 19.

COUNT IV

(DECLARATORY JUDGMENT OF ALLEGED NONINFRINGEMENT OF THE '949 PATENT)

20. Apple repeats its responses to Counterclaim Paragraphs 1-19 as if fully set forth herein.

21. Apple denies the allegations in Counterclaim Paragraph 21.

22. Apple denies the allegations in Counterclaim Paragraph 22.

COUNT V

(DECLARATORY JUDGMENT OF ALLEGED INVALIDITY OF THE '381 PATENT)

23. Apple repeats its responses to Counterclaim Paragraphs 1-22 as if fully set forth herein.

24. Apple denies the allegations in Counterclaim Paragraph 24.

25. Apple denies the allegations in Counterclaim Paragraph 25.

COUNT VI

(DECLARATORY JUDGMENT OF ALLEGED NONINFRINGEMENT OF THE '381 PATENT)

26. Apple repeats its responses to Counterclaim Paragraphs 1-25 as if fully set forth herein.

27. Apple denies the allegations in Counterclaim Paragraph 27.

28. Apple denies the allegations in Counterclaim Paragraph 28.

COUNT VII

(DECLARATORY JUDGMENT OF ALLEGED INVALIDITY OF THE '726 PATENT)

29. Apple repeats its responses to Counterclaim Paragraphs 1-28 as if fully set forth herein.

30. Apple denies the allegations in Counterclaim Paragraph 30.

31. Apple denies the allegations in Counterclaim Paragraph 31.

COUNT VIII

(DECLARATORY JUDGMENT OF ALLEGED NONINFRINGEMENT OF THE '726 PATENT)

32. Apple repeats its responses to Counterclaim Paragraphs 1-31 as if fully set forth herein.

33. Apple denies the allegations in Counterclaim Paragraph 33.

34. Apple denies the allegations in Counterclaim Paragraph 34.

COUNT IX

(DECLARATORY JUDGMENT OF ALLEGED UNENFORCEABILITY OF THE '726 PATENT)

35. Apple repeats its responses to Counterclaim Paragraphs 1-34 as if fully set forth herein.

36. Apple admits that Eric C. Anderson ("Mr. Anderson") is the named inventor on the '726 Patent, that the application that issued as the '726 Patent was filed on June 12, 1997, that the '726 Patent issued on July 6, 1999, and that Apple is asserting the '726 Patent against Defendants in this action.

37. Counterclaim Paragraph 37 misstates the duty to disclose under 37 C.F.R. § 1.56, and Apple therefore denies the allegations in Counterclaim Paragraph 37 on at least that basis.

38. Apple admits that claim 1 of the '726 Patent reads as follows:

> 1. A system for managing power conditions in a digital camera device, comprising:
>
> a processor coupled to said digital camera device for controlling said digital camera device; and
>
> a power manager coupled to said processor, said power manager including registers for containing status information, interrupt information, and control information;
>
> said power manager providing said status information, said interrupt information, and said control information to said processor for controlling said digital camera device.

Apple further admits that the '726 Patent at 2:13-25 states: "[t]he power manager monitors the voltage sensor to detect a power failure within the digital camera. After detecting a power failure in which the camera operating power is less than a specified threshold value, the power manager generates a powerfail interrupt. The central processing unit responsively performs a powerfail powerdown sequence to preserve image data contained within the digital camera at the time of the intervening power failure. The power manager removes operating power from all non-critical subsystems and switches the critical subsystems to a backup power supply. The central processing unit and the camera's volatile memory are thus maintained in a static low-power mode, with all states preserved intact." Apple denies the allegations in Counterclaim Paragraph 38 to the extent they misstate or mischaracterize the '726 Patent.

39. Apple denies the allegations in Counterclaim Paragraph 39.

40. Apple denies the allegations in Counterclaim Paragraph 40.

41. Apple denies the allegations in Counterclaim Paragraph 41.

42. Apple denies the allegations in Counterclaim Paragraph 42.

43. Apple denies the allegations in Counterclaim Paragraph 43.

44. Apple admits that "Defendant Motorola, Inc.'s Answer to Plaintiff's Second Amended Complaint," D.I. 186 in *Flashpoint Technology, Inc. v. AT&T Mobility, LLC et al.*, C.A. No. 08-00140-GMS (D. Del.), contains a section titled "Motorola's Counterclaims," and that that section contains 602 paragraphs. Apple denies the allegations in Counterclaim Paragraph 44 to the extent they misstate or mischaracterize "Defendant Motorola, Inc.'s Answer to Plaintiff's Second Amended Complaint."

45. Apple admits that "Defendant Motorola, Inc.'s Answer to Plaintiff's Second Amended Complaint," D.I. 186 in *Flashpoint Technology, Inc. v. AT&T Mobility, LLC et al.*, C.A. No. 08-00140-GMS (D. Del.), identifies certain attorneys from Kirkland & Ellis LLP as "Of Counsel" to Motorola, Inc. Apple further admits that other attorneys from Kirkland & Ellis LLP are acting as Apple's counsel in this action.

46. Apple admits that "Defendant Motorola, Inc.'s Answer to Plaintiff's Second Amended Complaint," D.I. 186 in *Flashpoint Technology, Inc. v. AT&T Mobility, LLC et al.*, C.A. No. 08-00140-GMS (D. Del.), alleges that a number of patents on which Mr. Anderson is a named inventor, and which are unrelated to the patents at issue in this action, are unenforceable due to alleged inequitable conduct for the reasons alleged therein. Apple denies the allegations in Counterclaim Paragraph 46 to the extent they misstate or mischaracterize the allegations in "Defendant Motorola, Inc.'s Answer to Plaintiff's Second Amended Complaint."

U.S. PATENT NO. 5,262,868

47. Apple admits that, on June 20, 1996, U.S. Patent App. No. 08/666,241 was filed naming Mr. Anderson as an inventor. Apple further admits that the Examiner who examined U.S. Patent App. No. 08/666,241 cited U.S. Patent No. 5,262,868 (the "Kaneko Patent") in an Office Action mailed September 26, 1997. Apple is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Counterclaim Paragraph 47, and therefore denies them.

48. Apple denies the allegations in Counterclaim Paragraph 48.

49. Apple admits that the Kaneko Patent at 1:64-2:3 states: "a digital, electronic, still camera with a function alarming a low voltage of a memory card built-in battery includes memory card installation (load) sensing means for sensing an installation (loading) of a memory card having a volatile semiconductor memory for storing image data, a built-in battery as a data backup power for preserving the image data stored in said volatile semiconductor memory . . . ." Apple further admits that the '726 Patent discloses the use of batteries, and that claim 2 of the '726 Patent reads as follows:

> 2. The system of claim 1 wherein said conditions include a low power level condition to which said processor responsively performs a powerdown sequence and a powerup sequence to protect data including captured image data in said digital camera device.

Except as expressly admitted, Apple denies the allegations in Counterclaim Paragraph 49.

50. Apple admits that, on June 20, 1996, U.S. Patent App. No. 08/666,241 was filed naming Mr. Anderson as an inventor, and that this application issued as U.S. Patent No. 6,031,964 (the "'964 Patent"), titled "System and Method for Using a Unified Memory Architecture to Implement a Digital Camera Device." Apple further admits that the Examiner who examined U.S. Patent App. No. 08/666,241 cited the Kaneko Patent in an Office Action

mailed September 26, 1997 for the reasons set forth in that Office Action. Apple further admits that claim 1 of the '964 Patent reads as follows:

> 1. A digital camera device comprising:
>
> a CPU capable of concurrently processing multiple unprocessed images into processed images;
>
> a memory device, coupled to said CPU, for storing sets of image data, comprising frame buffers for storing unprocessed image data and a random-access memory disk for storing unprocessed image data and processed image data;
>
> a memory manager for allocating storage locations to store said sets of image data within said memory device;
>
> a power management system, for monitoring a power supply to detect a power failure, configured to protect said sets of image data if said power failure is detected; and
>
> an interface coupled to said memory device whereby an external host computer can access said sets of image data stored in said memory device.

Except as expressly admitted, Apple denies the allegations in Counterclaim Paragraph 50.

51. Apple admits that the Kaneko Patent was not identified in an Information Disclosure Statement filed during the prosecution of the '726 Patent. Except as expressly admitted, Apple denies the allegations in Counterclaim Paragraph 51.

52. Apple denies the allegations in Counterclaim Paragraph 52.

U.S. PATENT NO. 5,247,321

53. Apple admits that the Examiner who examined U.S. Patent App. No. 08/666,241 cited U.S. Patent No. 5,247,321 (the "Kazami Patent") in an Office Action mailed September 3, 1998. Apple is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Counterclaim Paragraph 53, and therefore denies them.

54. Apple admits that the Kazami Patent at 2:34-50 states: "A recording circuit 3 records, by means of a magnetic recording head MH connected thereto, various items of photographing information on the film. A motor drive circuit 4 drives the film feed motor M so as to wind and rewind the film. A switch SW1 is turned on when the shutter release is half-pushed, while a switch SW2 is turned on when the shutter release is fully pushed. A battery cover switch SW3 is adapted to be turned on when a cover of a battery compartment is opened. A control circuit 5 is composed of a microcomputer and peripheral parts such as a memory 5*m*, and is capable of controlling the recording circuit 3 and the motor drive circuit 4 in accordance with signals from the battery voltage detection circuit 1, photoelectric conversion circuit 2 and the switches SW1 to SW3." Apple further admits that the Kazami Patent at 2:50-58 states: "The memory 5*m* includes the EEROM which retains its content even when the voltage of the battery BAT has come down to 0 V. This memory 5*m* is for storing photographing information. A timer T1 measures the time during feeding of the film and produces a film feed failure signal when the time is over during feeding. The control circuit 5 and the battery voltage detection circuit 1 are supplied with power from the battery BAT." Apple further admits that the Kazami Patent at 6:21-30 states: "It will be also clear from the foregoing description that the memory 5 m forms the photographing information storage means, while the recording circuit 3 and the magnetic head MH in cooperation provide the recording means. It will be also clear that the motor drive circuit 4 and the film feed motor M form the film feeding means, and that the film feed failure detection means is constituted by the battery voltage detection circuit 1, battery cover switch SW3 and the timer T1. Obviously, the control circuit 5 serves as the control means." Except as expressly admitted, Apple denies the allegations in Counterclaim Paragraph 54.

55. Apple admits that the ‘726 Patent discloses the use of backup batteries, and that claim 2 of the ‘726 Patent reads as follows:

> 2. The system of claim 1 wherein said conditions include a low power level condition to which said processor responsively performs a powerdown sequence and a powerup sequence to protect data including captured image data in said digital camera device.

Except as expressly admitted, Apple denies the allegations in Counterclaim Paragraph 55.

56. Apple admits that, on June 20, 1996, U.S. Patent App. No. 08/666,241 was filed naming Mr. Anderson as an inventor, and that this application issued as U.S. Patent No. 6,031,964 (the "'964 Patent"), titled "System and Method for Using a Unified Memory Architecture to Implement a Digital Camera Device." Apple further admits that the Examiner who examined U.S. Patent App. No. 08/666,241 made reference to the Kazami Patent in a September 3, 1998 Office Action as follows: "The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited references relate to an apparatus for monitoring the power supply to detect the failure and switching the power source to the back up power supply (the abstract of Inoue et al; column 4, lines 48-59 of Watanabe et al; column 10, lines 4-13 of Kravette et al; and column 2, lines 45-63 of Kazami)." Apple further admits that claim 1 of the ‘964 Patent reads as follows:

> 1. A digital camera device comprising:
>
> a CPU capable of concurrently processing multiple unprocessed images into processed images;
>
> a memory device, coupled to said CPU, for storing sets of image data, comprising frame buffers for storing unprocessed image data and a random-access memory disk for storing unprocessed image data and processed image data;
>
> a memory manager for allocating storage locations to store said sets of image data within said memory device;

> a power management system, for monitoring a power supply to detect a power failure, configured to protect said sets of image data if said power failure is detected; and
>
> an interface coupled to said memory device whereby an external host computer can access said sets of image data stored in said memory device.

Except as expressly admitted, Apple denies the allegations in Counterclaim Paragraph 56.

57. Apple admits that the Kazami Patent was not identified in an Information Disclosure Statement filed during the prosecution of the '726 Patent. Except as expressly admitted, Apple denies the allegations in Counterclaim Paragraph 57.

58. Apple denies the allegations in Counterclaim Paragraph 58.

U.S. PATENT NO. 5,541,656

59. Apple admits that USPTO records indicate that, on August 28, 1997, U.S. Patent App. No. 08/920,140 was filed naming Mr. Anderson as an inventor. Apple further admits that USPTO records indicate that the Examiner who examined U.S. Patent App. No. 08/920,140 cited U.S. Patent No. 5,541,656 (the "Kare Patent") in an Office Action mailed November 2, 1998. Apple is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Counterclaim Paragraph 59, and therefore denies them.

60. Apple denies the allegations in Counterclaim Paragraph 60.

61. Apple admits that the Kare Patent at 6:43-46 states: "If the camera suffers an unexpected loss of power during any operation, it preferably completes that operation when power is restored (regardless of whether the camera is on or off)." Apple further admits that the Kare Patent at 7:66-8:3 states: "Sensing of the 'empty' battery level should preferably be set high enough so that it prevents the user (and host) from initiating any operation (e.g., taking a picture, erasing images) that might require more power to complete the operation than is available." Apple further admits that claim 2 of the '726 Patent reads as follows:

> 2. The system of claim 1 wherein said conditions include a low power level condition to which said processor responsively performs a powerdown sequence and a powerup sequence to protect data including captured image data in said digital camera device.

Except as expressly admitted, Apple denies the allegations in Counterclaim Paragraph 61.

62. Apple admits that USPTO records indicate that, on August 28, 1997, U.S. Patent App. No. 08/920,140 was filed naming Mr. Anderson as an inventor, and that this application issued as U.S. Patent No. 6,002,436 (the "'436 Patent"), titled "Method and System for Auto Wake-Up for Time Lapse Image Capture in an Image Capture Unit." Apple further admits that USPTO records indicate that the Examiner who examined U.S. Patent App. No. 08/920,140 cited the Kare Patent in an Office Action mailed November 2, 1998 rejecting one or more pending claims for the reasons set forth in that Office Action. Apple further admits that claim 1 of the '436 Patent reads as follows:

> 1. A method for time lapse capture in an image capture unit, the method comprising:
>
> allowing the image capture unit to be placed in a time lapse sequence;
>
> capturing a first image;
>
> automatically initiating a sleep mode after capturing the first image if the image capture unit is in the time lapse sequence; and
>
> automatically transitioning from the sleep mode into a wake mode prior to capturing a second image if the image capture device is in the time lapse sequence.

Except as expressly admitted, Apple denies the allegations in Counterclaim Paragraph 62.

63. Apple admits that the Kare Patent was not identified in an Information Disclosure Statement filed during the prosecution of the '726 Patent. Except as expressly admitted, Apple denies the allegations in Counterclaim Paragraph 63.

64. Apple denies the allegations in Counterclaim Paragraph 64.

65. Apple denies the allegations in Counterclaim Paragraph 65.

COUNT X

(DECLARATORY JUDGMENT OF ALLEGED INVALIDITY OF THE '076 PATENT)

66. Apple repeats its responses to Counterclaim Paragraphs 1-65 as if fully set forth herein.

67. Apple denies the allegations in Counterclaim Paragraph 67.

68. Apple denies the allegations in Counterclaim Paragraph 68.

COUNT XI

(DECLARATORY JUDGMENT OF ALLEGED NONINFRINGEMENT OF THE '076 PATENT)

69. Apple repeats its responses to Counterclaim Paragraphs 1-68 as if fully set forth herein.

70. Apple denies the allegations in Counterclaim Paragraph 70.

71. Apple denies the allegations in Counterclaim Paragraph 71.

COUNT XII

(DECLARATORY JUDGMENT OF ALLEGED INVALIDITY OF THE '105 PATENT)

72. Apple repeats its responses to Counterclaim Paragraphs 1-71 as if fully set forth herein.

73. Apple denies the allegations in Counterclaim Paragraph 73.

74. Apple denies the allegations in Counterclaim Paragraph 74.

COUNT XIII

(DECLARATORY JUDGMENT OF ALLEGED NONINFRINGEMENT OF THE ‘105 PATENT)

75. Apple repeats its responses to Counterclaim Paragraphs 1-74 as if fully set forth herein.

76. Apple denies the allegations in Counterclaim Paragraph 76.

77. Apple denies the allegations in Counterclaim Paragraph 77.

COUNT XIV

(DECLARATORY JUDGMENT OF ALLEGED INVALIDITY OF THE ‘599 PATENT)

78. Apple repeats its responses to Counterclaim Paragraphs 1-77 as if fully set forth herein.

79. Apple denies the allegations in Counterclaim Paragraph 79.

80. Apple denies the allegations in Counterclaim Paragraph 80.

COUNT XV

(DECLARATORY JUDGMENT OF ALLEGED NONINFRINGEMENT OF THE ‘599 PATENT)

81. Apple repeats its responses to Counterclaim Paragraphs 1-80 as if fully set forth herein.

82. Apple denies the allegations in Counterclaim Paragraph 82.

83. Apple denies the allegations in Counterclaim Paragraph 83.

COUNT XVI

(DECLARATORY JUDGMENT OF ALLEGED INVALIDITY OF THE ‘354 PATENT)

84. Apple repeats its responses to Counterclaim Paragraphs 1-83 as if fully set forth herein.

85. Apple denies the allegations in Counterclaim Paragraph 85.

86. Apple denies the allegations in Counterclaim Paragraph 86.

COUNT XVII

(DECLARATORY JUDGMENT OF ALLEGED NONINFRINGEMENT OF THE '354 PATENT)

87. Apple repeats its responses to Counterclaim Paragraphs 1-86 as if fully set forth herein.

88. Apple denies the allegations in Counterclaim Paragraph 88.

89. Apple denies the allegations in Counterclaim Paragraph 89.

COUNTERCLAIMS FOR ALLEGED PATENT INFRINGEMENT

90. Apple admits that HTC Corp. purports to seek remedies for Apple's alleged infringement of the '032, HTC '354, and '578 Patents, but denies that there is any factual or legal basis for HTC Corp.'s infringement allegations or that HTC Corp. is entitled to any relief. Except as expressly admitted, Apple denies the allegations in Counterclaim Paragraph 90.

91. Apple denies the allegations in Counterclaim Paragraph 91.

COUNT XVIII

(ALLEGED INFRINGEMENT OF THE '032 PATENT)

92. Apple repeats its responses to Counterclaim Paragraphs 1-91 as if fully set forth herein.

93. Apple admits that what purports to be a copy of U.S. Patent No. 7,278,032 is attached to the Defendants' counterclaims as Exhibit A. Apple further admits that Exhibit A is titled "Circuit and Operating Method for Integrated Interface of PDA and Wireless Communication System" and indicates an issue date of October 2, 2007. Except as expressly admitted, Apple denies the allegations in Counterclaim Paragraph 93, including the allegation that the '032 Patent was duly and legally issued.

94. Apple is without knowledge or information sufficient to form a belief as to the truth of the allegations in Counterclaim Paragraph 94, and therefore denies them.

95. Apple denies the allegations in Counterclaim Paragraph 95.

96. Apple denies the allegations in Counterclaim Paragraph 96.

97. Apple denies the allegations in Counterclaim Paragraph 97.

98. Apple denies the allegations in Counterclaim Paragraph 98.

99. Apple denies the allegations in Counterclaim Paragraph 99.

COUNT XIX

(ALLEGED INFRINGEMENT OF THE HTC '354 PATENT)

100. Apple repeats its responses to Counterclaim Paragraphs 1-99 as if fully set forth herein.

101. Apple admits that what purports to be a copy of U.S. Patent No. 5,377,354 is attached to Defendants' counterclaims as Exhibit B. Apple further admits that Exhibit B is titled "Method and System for Sorting and Prioritizing Electronic Mail Messages" and indicates an issue date of December 27, 1994. Except as expressly admitted, Apple denies the allegations in Counterclaim Paragraph 101, including the allegation that the HTC '354 Patent was duly and legally issued.

102. Apple is without knowledge or information sufficient to form a belief as to the truth of the allegations in Counterclaim Paragraph 102, and therefore denies them.

103. Apple denies the allegations in Counterclaim Paragraph 103.

104. Apple denies the allegations in Counterclaim Paragraph 104.

105. Apple denies the allegations in Counterclaim Paragraph 105.

106. Apple denies the allegations in Counterclaim Paragraph 106.

107. Apple denies the allegations in Counterclaim Paragraph 107.

COUNT XX

(ALLEGED INFRINGEMENT OF THE '578 PATENT)

108. Apple repeats its responses to Counterclaim Paragraphs 1-107 as if fully set forth herein.

109. Apple admits that what purports to be a copy of U.S. Patent No. 6,188,578 is attached to Defendants' counterclaims as Exhibit C. Apple further admits that Exhibit C is titled "Integrated Circuit Package with Multiple Heat Dissipation Paths" and indicates an issue date of February 13, 2001. Except as expressly admitted, Apple denies the allegations in Counterclaim Paragraph 109, including the allegation that the '578 Patent was duly and legally issued.

110. Apple is without knowledge or information sufficient to form a belief as to the truth of the allegations in Counterclaim Paragraph 110, and therefore denies them.

111. Apple denies the allegations in Counterclaim Paragraph 111.

112. Apple denies the allegations in Counterclaim Paragraph 112.

113. Apple denies the allegations in Counterclaim Paragraph 113.

114. Apple denies the allegations in Counterclaim Paragraph 114.

115. Apple denies the allegations in Counterclaim Paragraph 115.

DEMAND FOR JURY TRIAL

No response is required to Defendants' Demand For Jury Trial. Apple reiterates its demand for a trial by jury in this action for all the issues so triable.

DEFENDANTS' PRAYER FOR RELIEF

Apple denies that Defendants are entitled to any relief whatsoever from Apple or the Court, either as prayed for in Defendants' counterclaims or otherwise. To the extent that paragraphs 1-12 under Defendants' Prayer For Relief are interpreted to contain any factual allegations, Apple denies them.

GENERAL DENIAL

Apple further denies each allegation contained in Defendants' counterclaims that was not specifically admitted, denied, or otherwise responded to in this Reply to Defendants' counterclaims.

APPLE'S AFFIRMATIVE DEFENSES

Apple alleges and asserts the following defenses in response to the allegations of Defendants' counterclaims, undertaking the burden of proof only as to those defenses deemed affirmative defenses by law, regardless of how such defenses are denominated herein. In addition to the affirmative defenses described below, Apple specifically reserves all rights to allege additional affirmative defenses that become known through the course of discovery.

First Affirmative Defense

Apple has not directly or indirectly infringed, and is not directly or indirectly infringing, any claim of the '032 Patent, the HTC '354 Patent, or the '578 Patent, either literally or under the doctrine of equivalents.

Second Affirmative Defense

The claims of the '032 Patent, HTC '354 Patent, and '578 Patent are invalid for failing to comply with one or more of the conditions for patentability set forth in Part II of Title 35 of the United States Code, including 35 U.S.C. §§ 101, 102, 103, and/or 112.

Third Affirmative Defense

HTC Corp. is estopped, based on statements, representations, and admissions made during prosecution of the patent applications that led to the '032 Patent, HTC '354 Patent, and '578 Patent, from asserting that the claims of said patents are infringed by Apple or Apple's products.

Fourth Affirmative Defense

HTC Corp. is precluded from seeking recovery for any of Apple's allegedly infringing acts occurring more than six years before the filing of its counterclaims.

Fifth Affirmative Defense

To the extent that HTC Corp. is alleging infringement based on use or manufacture by or for the United States, such claims are barred by 28 U.S.C. § 1498.

Sixth Affirmative Defense

HTC Corp.'s counterclaims are barred, in whole or in part, by the doctrine of laches.

Seventh Affirmative Defense

To the extent HTC Corp. or its predecessor(s) have failed to comply with the marking requirement of 35 U.S.C. § 287(a), HTC Corp. cannot recover any damages for Apple's alleged infringement prior to the date its counterclaims were filed.

APPLE'S COUNTER-COUNTERCLAIMS

Apple, for its counter-counterclaims against HTC Corp., alleges as follows:

PARTIES

1. Apple is a corporation organized under the laws of the state of California with its principal place of business at 1 Infinite Loop, Cupertino, California 95014.

2. Upon information and belief, HTC Corp. is a corporation organized and existing under the laws of Taiwan with its principal place of business at 23 Xinghau Road, Taoyuan 330, Taiwan, Republic of China.

JURISDICTION AND VENUE

3. This is a civil action for a declaration of noninfringement and invalidity of the '032 Patent, the HTC '354 Patent, and the '578 Patent arising under the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*, and the patent laws of the United States, 35 U.S.C. § 100, *et seq.*

4. This Court has subject matter jurisdiction over these counterclaims pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, and 28 U.S.C. §§ 1331 and 1338(a).

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b), (c), and (d), and because HTC Corp. filed its counterclaims in this district.

COUNT I

DECLARATORY JUDGMENT OF NONINFRINGEMENT OF THE '032 PATENT

6. Apple incorporates by reference and realleges the allegations contained in paragraphs 1 through 5 above, as though fully set forth herein.

7. HTC Corp. alleges in its counterclaims that it is the assignee and owner of all right, title, and interest to the '032 Patent, with the legal right to enforce the patent, sue for infringement, and seek equitable relief and damages.

8. HTC Corp. also alleges in its counterclaims that Apple has infringed the '032 Patent.

9. Apple denies that it has infringed the '032 Patent.

10. An actual and justiciable controversy within the meaning of the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq*., therefore exists between Apple and HTC Corp. with respect to Apple's alleged infringement of the '032 Patent.

11. A judicial declaration of Apple's noninfringement of the '032 Patent is necessary and appropriate to resolve this controversy.

COUNT II

DECLARATORY JUDGMENT OF INVALIDITY OF THE '032 PATENT

12. Apple incorporates by reference and realleges the allegations contained in paragraphs 1 through 11 above, as though fully set forth herein.

13. Apple contends that the claims of the ‘032 Patent are invalid for failure to comply with one or more of the conditions for patentability set forth in Part II of Title 35 of the United States Code, including 35 U.S.C. §§ 101, 102, 103, and/or 112.

14. By virtue of its filing of its counterclaim for alleged infringement of the ‘032 Patent, HTC Corp. necessarily contends that one or more claims of the ‘032 Patent are valid.

15. An actual and justiciable controversy within the meaning of the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq*., therefore exists between Apple and HTC Corp. with respect to the invalidity of the ‘032 Patent.

16. A judicial declaration of the invalidity of the ‘032 Patent is necessary and appropriate to resolve this controversy.

COUNT III

DECLARATORY JUDGMENT OF NONINFRINGEMENT OF THE HTC ‘354 PATENT

17. Apple incorporates by reference and realleges the allegations contained in paragraphs 1 through 16 above, as though fully set forth herein.

18. HTC Corp. alleges in its counterclaims that it is the assignee and owner of all right, title, and interest to the HTC ‘354 Patent, with the legal right to enforce the patent, sue for infringement, and seek equitable relief and damages.

19. HTC Corp. also alleges in its counterclaims that Apple has infringed the HTC ‘354 Patent.

20. Apple denies that it has infringed the HTC ‘354 Patent.

21. An actual and justiciable controversy within the meaning of the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq*., therefore exists between Apple and HTC Corp. with respect to Apple’s alleged infringement of the HTC ‘354 Patent.

22. A judicial declaration of Apple's noninfringement of the HTC '354 Patent is necessary and appropriate to resolve this controversy.

COUNT IV

DECLARATORY JUDGMENT OF INVALIDITY OF THE HTC '354 PATENT

23. Apple incorporates by reference and realleges the allegations contained in paragraphs 1 through 22 above, as though fully set forth herein.

24. Apple contends that the claims of the HTC '354 Patent are invalid for failure to comply with one or more of the conditions for patentability set forth in Part II of Title 35 of the United States Code, including 35 U.S.C. §§ 101, 102, 103, and/or 112.

25. By virtue of its filing of its counterclaim for alleged infringement of the HTC '354 Patent, HTC Corp. necessarily contends that one or more claims of the HTC '354 Patent are valid.

26. An actual and justiciable controversy within the meaning of the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq*., therefore exists between Apple and HTC Corp. with respect to the invalidity of the HTC '354 Patent.

27. A judicial declaration of the invalidity of the HTC '354 Patent is necessary and appropriate to resolve this controversy.

COUNT V

DECLARATORY JUDGMENT OF NONINFRINGEMENT OF THE '578 PATENT

28. Apple incorporates by reference and realleges the allegations contained in paragraphs 1 through 27 above, as though fully set forth herein.

29. HTC Corp. alleges in its counterclaims that it is the assignee and owner of all right, title, and interest to the '578 Patent, with the legal right to enforce the patent, sue for infringement, and seek equitable relief and damages.

30. HTC Corp. also alleges in its counterclaims that Apple has infringed the '578 Patent.

31. Apple denies that it has infringed the '578 Patent.

32. An actual and justiciable controversy within the meaning of the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq*., therefore exists between Apple and HTC Corp. with respect to Apple's alleged infringement of the '578 Patent.

33. A judicial declaration of Apple's noninfringement of the '578 Patent is necessary and appropriate to resolve this controversy.

COUNT VI

DECLARATORY JUDGMENT OF INVALIDITY OF THE '578 PATENT

34. Apple incorporates by reference and realleges the allegations contained in paragraphs 1 through 33 above, as though fully set forth herein.

35. Apple contends that the claims of the '578 Patent are invalid for failure to comply with one or more of the conditions for patentability set forth in Part II of Title 35 of the United States Code, including 35 U.S.C. §§ 101, 102, 103, and/or 112.

36. By virtue of its filing of its counterclaim for alleged infringement of the '578 Patent, HTC Corp. necessarily contends that one or more claims of the '578 Patent are valid.

37. An actual and justiciable controversy within the meaning of the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq*., therefore exists between Apple and HTC Corp. with respect to the invalidity of the '578 Patent.

38. A judicial declaration of the invalidity of the '578 Patent is necessary and appropriate to resolve this controversy.

PRAYER FOR RELIEF

WHEREFORE, Apple prays for judgment in its favor and against Defendants as follows:

A. That Defendants take nothing by their counterclaims;

B. That the Court enter judgment against Defendants and in favor of Apple and that the Defendants' counterclaims be dismissed in their entirety, with prejudice;

C. That the Court declare that Apple does not infringe and has not infringed any claim of any of the '032 Patent, HTC '354 Patent, and '578 Patent;

D. That the Court declare that the claims of each of the '032 Patent, HTC '354 Patent, and '578 Patent are invalid;

E. That the Court deem this an exceptional case under 35 U.S.C. § 285 and award Apple its costs and reasonable attorneys' fees;

F. That the Court grant Apple the relief requested in Apple's First Amended Complaint for Patent Infringement (D.I. 38); and

G. That the Court grant Apple any and all other further relief that the Court deems just and proper.

DEMAND FOR JURY TRIAL

Apple hereby demands a jury trial on all the issues so triable.

Dated: July 30, 2010

/s/Richard K. Herrmann

Richard K. Herrmann (# 405)
Mary B. Matterer (# 2696)
MORRIS JAMES LLP
500 Delaware Avenue, Suite 1500
Wilmington, Delaware 19801
Telephone: (302) 888-6800
rherrmann@morrisjames.com

Of Counsel:

Robert G. Krupka, P.C.
KIRKLAND & ELLIS LLP
333 South Hope Street
Los Angeles, California 90071
Telephone: (213) 680-8400

Gregory S. Arovas, P.C.
Steven Cherny
Robert A. Appleby
Melanie R. Rupert
Ryan H. Coletti
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800

Kenneth H. Bridges
Michael T. Pieja
Brian C. Kwok
WONG, CABELLO, LUTSCH,
RUTHERFORD & BRUCCULERI LLP
540 Cowper Street, Suite 100
Palo Alto, California 94301
Telephone: (650) 681-4475

Mark Fowler
Elizabeth Day
David Alberti
Yakov Zolotorev
DLA Piper LLP (US)
2000 University Avenue
East Palo Alto, California 94303-2248
Telephone: (650) 833-2000

Clayton Thompson
DLA Piper LLP (US)
1775 Wiehle Avenue, Suite 400
Reston, Virginia 20190-5159
Telephone: (703) 773-4000

Attorneys for Apple Inc.