UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 06-60905-CIV-ALTONAGA/TURNOFF

F & G RESEARCH, INC.,

Plaintiff,

v.

GOOGLE INC.,

Defendant.

GOOGLE INC.'S STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT AND FOR ATTORNEYS' FEES

1. Plaintiff F & G Research, Inc. has sued Google Inc. for contributory infringement of United States Patent No. 5,313,229 (the '229 Patent) entitled "Mouse and Method for Concurrent Cursor Position and Scrolling Control." Amended Complaint, ¶ 7; Plaintiff's Reply to Counterclaim, ¶ 7.

2. Plaintiff's claims of contributory infringement are limited to the method claims, claims 12-16, of the '229 Patent. Pl's Reply to Countercl., ¶ 7.

3. The method claims of the '229 Patent contain the following language regarding the use of a computer mouse:

> Method of operating a computer in an interactive manner by a user, said computer including a display means and a mouse connect[ed] to said computer, said mouse comprising means for generating X-Y incremental movement for positioning a cursor at any of the plurality of positions . . ., supplementary control means for generating a supplementary control signal of variable size and magnitude under control of said user . . ., said display means including display areas accessible by said cursor for triggering execution of scrolling commands on receipt of said binary control commands while said cursor is positioned on said predetermined display areas; said method comprising generating scrolling commands to move information items or characters displayed on

> said display means from said supplementary control signal by operation of said supplementary control means by said user, said method including generating of said scrolling means including the steps. . . ."

4. The '229 Patent explains that the "supplementary control means" for producing scrolling signals is a part of the computer mouse:

> According to the invention the mouse . . . includes a supplementary control means for producing a supplementary control signal from which scrolling commands are derived when the supplementary signal is input to a computer. The supplementary control means includes a displaceable element movable by a digit of the hand moving the mouse and having a bounded range of displacement amounts. The displaceable element is moved against a restoring force of a spring means from a equilibrium position in which no displacement signal is generated so as to produce a signal representing the amount of displacement of the displaceable element from its equilibrium position.
>
> Supplementary control means can be a lever projecting out of the housing to be operated by the user's thumb of the same hand with which he or she operates the mouse . . .
>
> The main advantage of the mouse and method according to the invention is that it allows the user to concurrently and accurately control the scrolling of the text over which the cursor is being moved. . . ."

'229 Patent, col. 3, lns. 55 – col. 4, lns. 28.

5. Plaintiff has licensed the '229 Patent to manufacturers and distributors of scrolling mice. Answer and Countercl. ¶ 5; Def.'s Reply to Countercl. ¶ 2.

6. Plaintiff has licensed the '229 Patent to at least the following scrolling mouse producers: Logitech, Primax Electronics, Ltd., Acco Brands, Inc., Sony Corporation, Spec Research, Inc., and Chicony Electronics Company. Answer and Countercl. ¶¶ 9, 15, 21, 25, 27 and 31; Def.'s Reply to Countercl. ¶ 2.

7. Logitech is one of the world's largest mouse manufacturers. Al-Salam Dec. ¶ 3.

8. Plaintiff's licenses extend to uses of computer mice by the licensees' customers. Ans. and Countercl. ¶¶ 10, 16, 22, 25, 28, 32; Def.'s Reply to Countercl. ¶ 2.

9. Plaintiff is unaware of any action by Google to induce users of its software to use unlicensed scrolling mice. Answer and Countercl. ¶ 37; Def.'s Reply to Countercl. ¶ 2.

10. Plaintiff has never identified to Google which brands of scrolling mice are not licensed. Answer and Countercl. ¶ 34; Def.'s Reply to Countercl. ¶ 2.

11. Plaintiff's claim is based upon Google's distribution of its Google Earth software. See, e.g., Pl's Reply to Countercl., ¶6.

12. Google Earth can work without a mouse. McClendon Dec. ¶ 4.

13. Google Earth will work with any computer mouse, including those with no scrolling features. McClendon Dec. ¶ 5.

14. Google Earth is generally distributed for free. McClendon Dec. ¶2.

Dated: December 19, 2006

Respectfully Submitted,

FELDMAN GALE, P.A.

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CERTIFICATE OF SERVICE

I hereby certify that on December 19, 2006, I electronically filed the foregoing document with the Clerk of the Court using CM/EFC. I also certify that the foregoing document is being served this day on Allen D. Brufsky, Esq., Christopher & Weisberg, P.A., 200 East Las Olas Boulevard, Suite 2040, Ft. Lauderdale, Florida 33301, via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Gregory L. Hillyer