

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**

**Case No. 1:10cv023580-Civ-RNS**

MOTOROLA MOBILITY, INC.,

Plaintiff,

v.

APPLE INC.,

Defendant.

**JURY TRIAL DEMANDED**

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APPLE INC.,

Counterclaim Plaintiff,

v.

MOTOROLA, INC. and  
MOTOROLA MOBILITY, INC.,

Counterclaim Defendants.

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**APPLE INC.'S REPLY IN SUPPORT OF ITS MOTION  
FOR LEAVE TO FILE AMENDED ANSWER**

## **I. INTRODUCTION**

Notably absent from the opposition brief filed by Motorola Mobility, Inc. (“Motorola”) is any attempt to address the fact that Apple Inc. (“Apple”) adequately pled a “violation of 35 U.S.C § 271” in its answer, *see* D.E. 68 at ¶¶ 185, 191 & 197, and that the proposed amendments merely add clarifying language to confirm Apple’s infringement theories under § 271(a), (b), (c), and/or (f). Motorola also does not—and cannot—dispute that Apple could not have alleged infringement under § 271(f) theory with specificity earlier because Motorola had not provided any discovery regarding its foreign infringing activities prior to February 28, 2012. Instead, Motorola argues that the Court should allow Apple’s amended pleading only if it also allows Motorola to supplement its infringement contentions with the accused Apple products previously excluded by Judge Ungaro’s December 6, 2012 Order granting Apple’s motion to strike. D.E. 198. Yet, as Apple explained in its opening brief (and to Motorola during the meet and confer process, *see* Ho Exh. F), the situations are not analogous.

## **II. ARGUMENT**

Motorola does not dispute that the method and location of installing interactive programming guides (“IPGs”) on the accused set-top boxes (“STBs”) is not the type of information that is publicly available. Motorola similarly does not dispute that it has actively resisted providing the discovery requested by Apple. Indeed, it was only through the February 28, 2012 deposition of Evan Groat that Apple first learned that Motorola’s installation of IPG software on its set-top boxes STBs may occur outside the United States, in violation of 35 U.S.C. § 271(f). For this reason alone, good cause exists to allow Apple’s proposed amendment because the underlying evidence could not have been discovered earlier, despite Apple’s exercise of reasonable diligence, and Apple promptly sought to amend its pleading as soon as it had a factual basis to specifically allege infringement under § 271(f).

Motorola's offer to withdraw its objections to Apple's amended pleading if the Court allows Motorola to amend its infringement contentions is simply another attempt to end run around Judge Ungaro's prior Order.<sup>1</sup> Unlike Motorola, Apple is not attempting to amend its infringement contentions or add any new accused products. Regardless of whether Motorola's infringement occurs within the United States or abroad, Apple's contentions regarding the functionalities of the accused Motorola STBs are the same. At most, Apple's proposed amendment will require Motorola to provide more damages-related discovery, but only because Motorola has been improperly withholding financial data related to sales of accused STBs for which the installation of IPGs occurs abroad. In contrast, Motorola's proposed amendment of its infringement contentions not only seeks to open the door to discovery regarding completely new products, but also new theories regarding the accused functionalities in those products. It would be impossible for Apple to gather, review, and produce all the responsive documents and source code or make all its witnesses available for deposition within the current discovery period, which is scheduled to end on May 4, 2012. Moreover, Apple would need to conduct an internal investigation to determine which witnesses could testify concerning the newly accused products and functionalities. In some cases, these might be the same witnesses who have already been deposed by Motorola, but in others, it might take weeks to determine who the most knowledgeable individuals are.

### **III. CONCLUSION**

For the reasons stated above and in Apple's opening brief, Apple respectfully requests that the Court grant it leave to amend its answer.

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<sup>1</sup> While Apple does not agree to the lopsided horse-trade proposed by Motorola, Apple proposes consolidating the two actions pending before this Court and extending the procedural schedule to allow sufficient time for the discovery needed on the newly accused products. If the Court grants Apple's Motion to Amend the Procedural Schedule, D.E. 323, this motion (and Motorola's objections thereto) would be rendered moot.

DATED: April 18, 2012

Respectfully submitted,

/s/ Christopher R. J. Pace

Christopher R. J. Pace

[christopher.pace@weil.com](mailto:christopher.pace@weil.com)

Edward Soto

WEIL, GOTSHAL & MANGES LLP

1395 Brickell Avenue, Suite 1200

Miami, FL 33131

Telephone: (305) 577-3100

Facsimile: (305) 374-7159

*Attorneys for Apple Inc.*

Robert T. Haslam

[rhaslam@cov.com](mailto:rhaslam@cov.com)

COVINGTON & BURLING LLP

333 Twin Dolphin Drive, Suite 700

Redwood Shores, CA 94065

Telephone: (650) 632-4700

Facsimile: (650) 632-4800

Robert D. Fram

[rfram@cov.com](mailto:rfram@cov.com)

Christine Saunders Haskett

[chaskett@cov.com](mailto:chaskett@cov.com)

Samuel F. Ernst

[sernst@cov.com](mailto:sernst@cov.com)

COVINGTON & BURLING LLP

One Front Street

San Francisco, CA 94111

Telephone: (415) 591-6000

Facsimile: (415) 591-6091

*Of Counsel:*

Matthew D. Powers

[Matthew.Powers@tensegritylawgroup.com](mailto:Matthew.Powers@tensegritylawgroup.com)

Steven Cherensky

[Steven.Cherensky@tensegritylawgroup.com](mailto:Steven.Cherensky@tensegritylawgroup.com)

Tensegrity Law Group LLP

201 Redwood Shores Parkway

Redwood Shores, CA 94065

Telephone: 650-802-6000

Facsimile: 650-802-6001

Mark G. Davis

[mark.davis@weil.com](mailto:mark.davis@weil.com)

WEIL, GOTSHAL & MANGES LLP

1300 Eye Street, N.W., Suite 900

Washington, DC 20005

Telephone: (202) 682-7000

Facsimile: (202) 857-0940

Anne M. Cappella

[anne.cappella@weil.com](mailto:anne.cappella@weil.com)

Jill J. Schmidt

[jill.schmidt@weil.com](mailto:jill.schmidt@weil.com)

WEIL, GOTSHAL & MANGES LLP

201 Redwood Shores Parkway

Redwood Shores, CA 94065

Telephone: (650) 802-3000

Facsimile: (650) 802-3100

**CERTIFICATE OF SERVICE**

I hereby certify that on April 18, 2012, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to received electronically Notices of Electronic Filing.

/s/ Christopher R. J. Pace  
Christopher R. J. Pace (Fla. Bar No. 0721166)

**SERVICE LIST**  
**Motorola Mobility, Inc. versus Apple Inc.**  
**Case No. 1:10cv023580-Civ-RNS**  
**United States District Court, Southern District of Florida**

Edward M. Mullins  
Fla. Bar No. 863920  
[emullins@astidavis.com](mailto:emullins@astidavis.com)  
ASTIGARRAGA DAVIS MULLINS & GROSSMAN, P.A.  
701 Brickell Avenue, 16th Floor  
Miami, FL 33131  
Telephone: (305) 372-8282  
Facsimile: (305) 372-8202

*Of Counsel:*  
Charles K. Verhoeven  
David A. Perlson  
QUINN EMANUEL URQUHART & SULLIVAN, LLP  
50 California Street, 22nd Floor  
San Francisco, CA 93111  
(415) 875-6600

Raymond N. Nimrod  
Edward J. DeFranco  
QUINN EMANUEL URQUHART & SULLIVAN, LLP  
51 Madison Avenue, 22nd Floor  
New York, NY 10010  
(212) 849-7000

David A. Nelson  
QUINN EMANUEL URQUHART & SULLIVAN, LLP  
500 West Madison Street, Suite 2450  
Chicago, IL 60661  
(312) 705-7400

[Moto-Apple-SDFL@quinnemanuel.com](mailto:Moto-Apple-SDFL@quinnemanuel.com)

*Attorneys for Motorola Mobility, Inc. and Motorola, Inc.*  
Electronically served via email