

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:10-cv-24063-MORENO

)	
MOTOROLA MOBILITY, INC.,)	
)	
Plaintiff,)	
)	
vs.)	
)	
MICROSOFT CORPORATION,)	
)	
Defendant.)	
)	
)	JURY TRIAL DEMANDED
)	

**DEFENDANT MICROSOFT CORPORATION'S ANSWER AND
COUNTERCLAIMS TO PLAINTIFF'S COMPLAINT FOR PATENT INFRINGEMENT**

Microsoft Corporation (“Microsoft”) answers Motorola Mobility, Inc.’s (“Motorola”) Complaint for Patent Infringement (“Complaint”), filed on November 10, 2010, as follows (the numbered paragraphs below correspond to the like numbered paragraphs in the Complaint and any allegation of the Complaint not expressly admitted below is denied):

NATURE OF THE ACTION

1. Microsoft admits that Motorola has brought this action alleging infringement by Microsoft of United States Patent Nos. 5,502,839 (“the ’839 Patent”); 5,764,899 (“the ’899 Patent”); 5,784,001 (“the ’001 Patent”); 6,272,333 (“the ’333 Patent”); 6,408,176 (“the ’176 Patent”); 6,757,544 (“the ’544 Patent”); and 6,983,370 (“the ’370 Patent”) (collectively, “the Motorola Asserted Patents”). However, Microsoft denies committing any infringement or other tortious or unlawful act and denies that Motorola is entitled to any remedy for Microsoft’s actions. Microsoft lacks knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 1 of the Complaint, and on that basis denies such allegations.

THE PARTIES

2. Microsoft lacks knowledge sufficient to form a belief as to the truth of the allegations in paragraph 2 of the Complaint, and on that basis denies such allegations.

3. Microsoft admits that it is a Washington corporation with its principal place of business at One Microsoft Way, Redmond, Washington 98052-6399.

JURISDICTION AND VENUE

4. Microsoft admits that Motorola has alleged an action for patent infringement and that such actions arise under the patent laws of the United States, 35 U.S.C. §§ 101 *et seq.* However, Microsoft denies committing any infringement or other tortious or unlawful act. Microsoft admits that this Court has subject matter jurisdiction over claims arising under the patent laws of the United States pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Microsoft admits that venue is proper in this Judicial District on the basis that Microsoft transacts business in this Judicial District, among others, but alleges that even if venue is proper, it is inconvenient. Microsoft denies that it has committed and/or induced any acts of patent infringement in this Judicial District or elsewhere. Further, Microsoft denies committing any tortious or unlawful act in this Judicial District or elsewhere.

6. Microsoft admits that it has an office in this Judicial District, that it has a registered agent in the State of Florida, and that this Court has personal jurisdiction over Microsoft for the purposes of this matter. Except as so admitted, Microsoft denies the remaining allegations in paragraph 6 of the Complaint.

THE ASSERTED PATENTS

7. Microsoft admits that U.S. Patent No. 5,502,839 is entitled “Object-Oriented Software Architecture Supporting Input/Output Device Independence,” bears an issuance date of March 26, 1996 and shows on its face that Frank C. Kolnick is the named inventor. Microsoft lacks knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 7 of the Complaint, and on that basis denies such allegations.

8. Microsoft admits that U.S. Patent No. 5,764,899 is entitled “Method And Apparatus For Communicating An Optimized Reply,” bears an issuance date of June 9, 1998 and shows on its face that Gene Eggleston, Mitch Hansen and Anthony Rzany are the named inventors. Microsoft lacks knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 8 of the Complaint, and on that basis denies such allegations.

9. Microsoft admits that U.S. Patent No. 5,784,001 is entitled “Method And Apparatus For Presenting Graphic Messages In A Data Communication Receiver,” bears an issuance date of July 21, 1998 and shows on its face that Joan Deluca, Douglas Kraul and Charles Edward Batey, Jr. are the named inventors. Microsoft lacks knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 9 of the Complaint, and on that basis denies such allegations.

10. Microsoft admits that U.S. Patent No. 6,272,333 is entitled “Method And Apparatus In A Wireless Communication System For Controlling A Delivery Of Data,” bears an issuance date of August 7, 2001 and shows on its face that Dwight Randall Smith is the named inventor. Microsoft lacks knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 10 of the Complaint, and on that basis denies such allegations.

11. Microsoft admits that U.S. Patent No. 6,408,176 is entitled “Method And Apparatus For Initiating A Communication In A Communication System,” bears an issuance date of June 18, 2002 and shows on its face that Kamala D. Urs is the named inventor. Microsoft lacks knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 11 of the Complaint, and on that basis denies such allegations.

12. Microsoft admits that U.S. Patent No. 6,757,544 is entitled “System And Method For Determining A Location Relevant To A Communication Device And/Or Its Associated User,” bears an issuance date of June 29, 2004 and shows on its face that Jayanthi Rangarajan, David Ladd, Senaka Balasuriya, and Curtis Tuckey are the named inventors. Microsoft lacks knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 12 of the Complaint, and on that basis denies such allegations.

13. Microsoft admits that U.S. Patent No. 6,983,370 is entitled “System For Providing Continuity Between Messaging Clients And Method Therefor,” bears an issuance date of January 3, 2006 and shows on its face that Eric Thomas Eaton, David Jeffery Hayes, and Von Alan Mock are the named inventors. Microsoft lacks knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 13 of the Complaint, and on that basis denies such allegations.

CLAIM ONE

([Alleged] Infringement of U.S. Patent No. 5,502,839)

14. Microsoft incorporates by reference paragraphs 1-13 above.
15. Microsoft denies the allegations in paragraph 15 of the Complaint.
16. Microsoft denies the allegations in paragraph 16 of the Complaint.
17. Microsoft denies that it has committed any acts of infringement. Microsoft further denies that Motorola has been damaged by Microsoft’s alleged activities or that Motorola is entitled to any form of injunctive relief on account of said alleged acts.
18. Microsoft denies that it has ever infringed or is currently infringing the ’839 Patent. Microsoft further denies that Motorola has been or continues to be damaged by Microsoft’s alleged activities.
19. Microsoft denies that it has ever infringed or is currently infringing the ’839 Patent, willfully or in any other way.
20. Microsoft denies the allegations in paragraph 20 of the Complaint.

CLAIM TWO

([Alleged] Infringement of U.S. Patent No. 5,764,899)

21. Microsoft incorporates by reference paragraphs 1-13 above.
22. Microsoft denies the allegations in paragraph 22 of the Complaint.

23. Microsoft denies the allegations in paragraph 23 of the Complaint.

24. Microsoft denies that it has committed any acts of infringement. Microsoft further denies that Motorola has been damaged by Microsoft's alleged activities or that Motorola is entitled to any form of injunctive relief on account of said alleged acts.

25. Microsoft denies that it has ever infringed or is currently infringing the '899 Patent. Microsoft further denies that Motorola has been or continues to be damaged by Microsoft's alleged activities.

26. Microsoft denies that it has ever infringed or is currently infringing the '899 Patent, willfully or in any other way.

27. Microsoft denies the allegations in paragraph 27 of the Complaint.

CLAIM THREE

([Alleged] Infringement of U.S. Patent No. 5,784,001)

28. Microsoft incorporates by reference paragraphs 1-13 above.

29. Microsoft denies the allegations in paragraph 29 of the Complaint.

30. Microsoft denies the allegations in paragraph 30 of the Complaint.

31. Microsoft denies that it has committed any acts of infringement. Microsoft further denies that Motorola has been damaged by Microsoft's alleged activities or that Motorola is entitled to any form of injunctive relief on account of said alleged acts.

32. Microsoft denies that it has ever infringed or is currently infringing the '001 Patent. Microsoft further denies that Motorola has been or continues to be damaged by Microsoft's alleged activities.

33. Microsoft denies that it has ever infringed or is currently infringing the '001 Patent, willfully or in any other way.

34. Microsoft denies the allegations in paragraph 34 of the Complaint.

CLAIM FOUR

([Alleged] Infringement of U.S. Patent No. 6,272,333)

35. Microsoft incorporates by reference paragraphs 1-13 above.

36. Microsoft denies the allegations in paragraph 36 of the Complaint.

37. Microsoft denies the allegations in paragraph 37 of the Complaint.

38. Microsoft denies that it has committed any acts of infringement. Microsoft further denies that Motorola has been damaged by Microsoft's alleged activities or that Motorola is entitled to any form of injunctive relief on account of said alleged acts.

39. Microsoft denies that it has ever infringed or is currently infringing the '333 Patent. Microsoft further denies that Motorola has been or continues to be damaged by Microsoft's alleged activities.

40. Microsoft denies that it has ever infringed or is currently infringing the '333 Patent, willfully or in any other way.

41. Microsoft denies the allegations in paragraph 41 of the Complaint.

CLAIM FIVE

([Alleged] Infringement of U.S. Patent No. 6,408,176)

42. Microsoft incorporates by reference paragraphs 1-13 above.

43. Microsoft denies the allegations in paragraph 43 of the Complaint.

44. Microsoft denies the allegations in paragraph 44 of the Complaint.

45. Microsoft denies that it has committed any acts of infringement. Microsoft further denies that Motorola has been damaged by Microsoft's alleged activities or that Motorola is entitled to any form of injunctive relief on account of said alleged acts.

46. Microsoft denies that it has ever infringed or is currently infringing the '176 Patent. Microsoft further denies that Motorola has been or continues to be damaged by Microsoft's alleged activities.

47. Microsoft denies that it has ever infringed or is currently infringing the '176 Patent, willfully or in any other way.

48. Microsoft denies the allegations in paragraph 48 of the Complaint.

CLAIM SIX

([Alleged] Infringement of U.S. Patent No. 6,757,544)

49. Microsoft incorporates by reference paragraphs 1-13 above.

50. Microsoft denies the allegations in paragraph 50 of the Complaint.

51. Microsoft denies the allegations in paragraph 51 of the Complaint.

52. Microsoft denies that it has committed any acts of infringement. Microsoft further denies that Motorola has been damaged by Microsoft's alleged activities or that Motorola is entitled to any form of injunctive relief on account of said alleged acts.

53. Microsoft denies that it has ever infringed or is currently infringing the '544 Patent. Microsoft further denies that Motorola has been or continues to be damaged by Microsoft's alleged activities.

54. Microsoft denies that it has ever infringed or is currently infringing the '544 Patent, willfully or in any other way.

55. Microsoft denies the allegations in paragraph 55 of the Complaint.

CLAIM SEVEN

([Alleged] Infringement of U.S. Patent No. 6,983,370)

56. Microsoft incorporates by reference paragraphs 1-13 above.

57. Microsoft denies the allegations in paragraph 57 of the Complaint.

58. Microsoft denies the allegations in paragraph 58 of the Complaint.

59. Microsoft denies that it has committed any acts of infringement. Microsoft further denies that Motorola has been damaged by Microsoft's alleged activities or that Motorola is entitled to any form of injunctive relief on account of said alleged acts.

60. Microsoft denies that it has ever infringed or is currently infringing the '370 Patent. Microsoft further denies that Motorola has been or continues to be damaged by Microsoft's alleged activities.

61. Microsoft denies that it has ever infringed or is currently infringing the '370 Patent, willfully or in any other way.

62. Microsoft denies the allegations in paragraph 55 of the Complaint.

JURY DEMAND

Microsoft acknowledges and joins in Motorola's demand for a trial by jury on all claims and all issues triable by jury in this action.

PRAYER FOR RELIEF

Microsoft denies that Motorola is entitled to any of the relief requested in its prayer for relief or any relief whatsoever.

Microsoft denies all allegations of the Complaint not specifically admitted above.

AFFIRMATIVE DEFENSES

First Affirmative Defense

63. On information and belief, Microsoft has not been and is not now infringing any valid and enforceable claim of the '839, '899, '001, '333, '176, '544 or '370 Patents, either directly or indirectly, literally or under the doctrine of equivalents, willfully or otherwise.

Second Affirmative Defense

64. On information and belief, each and every claim of the '839, '899, '001, '333, '176, '544 and '370 Patents is invalid for failure to comply with the conditions of patentability, including but not limited to 35 U.S.C. §§ 101, 102, 103, 111, 112, 113, and/or 133.

Third Affirmative Defense

65. On information and belief, Motorola has inexcusably delayed filing this suit for an unreasonable period of time to the material prejudice of Microsoft and is now barred from recovery of pre-suit damages because of laches.

Fourth Affirmative Defense

66. On information and belief, Motorola is estopped by representations or actions taken during the prosecution of the '839, '899, '001, '333, '176, '544 and/or '370 Patents and related patents under the doctrine of prosecution history estoppel.

Fifth Affirmative Defense

67. On information and belief, the claims of the '839, '899, '001, '333, '176, '544 and '370 Patents are barred by license, equitable estoppel and/or waiver.

Sixth Affirmative Defense

68. To the extent Motorola seeks damages for alleged infringement more than six years prior to the filing of the present litigation, Motorola's claims are barred by the statute of limitations under 35 U.S.C. § 286.

Seventh Affirmative Defense

69. On information and belief, Motorola's remedies are limited under 35 U.S.C. § 287.

Eighth Affirmative Defense

70. Motorola's demand to enjoin Microsoft is barred, as Motorola has suffered neither harm nor irreparable harm from Microsoft's actions.

Ninth Affirmative Defense

71. To the extent that Motorola's claims relate to the sale to and/or use by or for the United States government of the allegedly infringing products, Motorola's claims for relief are barred by 28 U.S.C. § 1498.

Tenth Affirmative Defense

72. Microsoft reserves all affirmative defenses under Rule 8(c) of the Federal Rules of Civil Procedure, the Patent Laws of the United States, and any other defenses, at law or in equity, that may now exist or in the future be available based on discovery and further factual investigation in this case.

COUNTERCLAIMS

Microsoft Corporation ("Microsoft") brings these counterclaims against Motorola Mobility, Inc. ("Motorola") for Motorola's infringement of U.S. Patent Nos. 6,791,536 ("the '536 Patent"); 6,897,853 ("the '853 Patent"); 7,024,214 ("the '214 Patent"); 7,493,130 ("the '130 Patent"); 7,383,460 ("the '460 Patent"); 6,897,904 ("the '904 Patent"); and 6,785,901 ("the '901 Patent") (collectively the "Microsoft Asserted Patents"), injunctive relief and declaratory relief and hereby avers and complains as follows:

PARTIES

1. Microsoft is a corporation organized and existing under the laws of the State of Washington, with its principal place of business in Redmond, Washington.

2. On information and belief, Motorola is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 600 North U.S. Highway 45, Libertyville, Illinois 60048.

JURISDICTION AND VENUE

4. Microsoft repeats and realleges the allegations of paragraphs 1 through 2 of these Counterclaims in their entirety.

5. Microsoft brings these counterclaims under the patent laws of the United States, 35 U.S.C. § 1, *et seq.*, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202. Thus, this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 & 1338(a).

6. Venue is proper in this district under 28 U.S.C. §§ 1391(b), (c), and (d) and 1400(b) and because Motorola is subject to personal jurisdiction in this district.

7. Personal jurisdiction is proper in this district at least because Motorola has consented to jurisdiction in this district by filing suit against Microsoft in this Court.

THE MICROSOFT ASSERTED PATENTS

8. The '536 Patent, entitled "Simulating Gestures Of A Pointing Device Using A Stylus And Providing Feedback Thereto," issued on September 14, 2004 and names Leroy B. Keely, David F. Jones, David Switzer, Michael Hin-cheung Tsang and William Hong Vong as inventors. Microsoft is the owner of all right, title, and interest in and to the '536 Patent, including the right to sue and recover for past infringement thereof. A true and correct copy of the '536 Patent is attached as Exhibit A.

9. The '853 Patent, entitled "Highlevel Active Pen Matrix," issued on May 24, 2005 and names Leroy B. Keely, Charlton E. Lui, F. David Jones, Ryan Edward Cukierman, Susanne Alysia Clark Cazzanti, Marieke Iwema and Robert Jarrett as inventors. Microsoft is the owner of all right, title, and interest in and to the '853 Patent, including the right to sue and recover for past infringement thereof. A true and correct copy of the '853 Patent is attached as Exhibit B.

10. The '214 Patent, entitled "Synchronizing Over A Number Of Synchronization Mechanisms Using Flexible Rules," issued on April 4, 2006 and names Shawn Domenic Loveland as the inventor. Microsoft is the owner of all right, title, and interest in and to the '214 Patent, including the right to sue and recover for past infringement thereof. A true and correct copy of the '214 Patent is attached as Exhibit C.

11. The '130 Patent, entitled "Synchronizing Over A Number Of Synchronization Mechanisms Using Flexible Rules," issued on February 17, 2009 and names Shawn Domenic Loveland as the inventor. Microsoft is the owner of all right, title, and interest in and to the '130 Patent, including the right to sue and recover for past infringement thereof. A true and correct copy of the '130 Patent is attached as Exhibit D.

12. The '460 Patent, entitled "Method And System For Configuring A Timer," issued on June 3, 2008 and names Bruce J. Sherwin, Jr. and Eric Nelson as inventors. Microsoft is the owner of all right, title, and interest in and to the '460 Patent, including the right to sue and recover for past infringement thereof. A true and correct copy of the '460 Patent is attached as Exhibit E.

13. The '904 Patent, entitled "Method And System For Selecting Among Multiple Tuners," issued on May 24, 2005 and names Peter J. Potrebic and Geoffrey Smith as inventors. Microsoft is the owner of all right, title, and interest in and to the '904 Patent, including the right to sue and recover for past infringement thereof. A true and correct copy of the '904 Patent is attached as Exhibit F.

14. The '901 Patent, entitled "Altering Locks On Programming Content," issued on August 31, 2004 and names Steven M. Horiwitz and Jeff Yaksick as inventors. Microsoft is the owner of all right, title, and interest in and to the '901 Patent, including the right to sue and recover for past infringement thereof. A true and correct copy of the '901 Patent is attached as Exhibit G.

MICROSOFT'S FIRST COUNT

(Motorola's Infringement of U.S. Patent No. 6,791,536)

15. Microsoft repeats and realleges the allegations of paragraphs 1 through 14 of these Counterclaims in their entirety.

16. On information and belief, Motorola has infringed, induced infringement of and/or contributorily infringed and continues to infringe, induce infringement of and/or contributorily infringe, at least independent claim 14 of the '536 Patent, pursuant to 35 U.S.C. § 271(a), (b) and/or (c), literally or under the doctrine of equivalents, in this district and

elsewhere in the United States, by making, using, selling, offering to sell and/or importing products such as Android smartphones including, *e.g.*, the Motorola Droid X and Motorola Droid 2.

17. On information and belief, instructional materials provided by Motorola (available at, *e.g.*, www.motorola.com/Support/US-EN/Consumer-Support/Mobile-Phones/Motorola+DROID+X and www.motorola.com/Support/US-EN/Consumer-Support/Mobile-Phones/Motorola+DROID+2) instruct customers how to use these products in accordance with at least independent claim 14 of the '536 Patent.

18. Microsoft is entitled to recover damages adequate to compensate it for Motorola's infringement, but in no event, less than a reasonable royalty.

19. Motorola's infringing activities have caused and will continue to cause Microsoft irreparable harm unless the infringement is enjoined by this Court.

MICROSOFT'S SECOND COUNT

(Motorola's Infringement of U.S. Patent No. 6,897,853)

20. Microsoft repeats and realleges the allegations of paragraphs 1 through 14 of these Counterclaims in their entirety.

21. On information and belief, Motorola has infringed, induced infringement of and/or contributorily infringed and continues to infringe, induce infringement of and/or contributorily infringe, at least independent claim 15 of the '853 Patent, pursuant to 35 U.S.C. § 271 (a), (b) and/or (c), literally or under the doctrine of equivalents, in this district and elsewhere in the United States, by making, using, selling, offering to sell and/or importing products such as Android smartphones including, *e.g.*, the Motorola Droid X and Motorola Droid 2.

22. On information and belief, instructional materials provided by Motorola (available at, *e.g.*, www.motorola.com/Support/US-EN/Consumer-Support/Mobile-Phones/Motorola+DROID+X and www.motorola.com/Support/US-EN/Consumer-Support/Mobile-Phones/Motorola+DROID+2) instruct customers how to use these products in accordance with at least independent claim 15 of the '853 Patent.

Support/Mobile-Phones/Motorola+DROID+2) instruct customers how to use these products in accordance with at least independent claim 15 of the '853 Patent.

23. Microsoft is entitled to recover damages adequate to compensate it for Motorola's infringement, but in no event, less than a reasonable royalty.

24. Motorola's infringing activities have caused and will continue to cause Microsoft irreparable harm unless the infringement is enjoined by this Court.

MICROSOFT'S THIRD COUNT

(Motorola's Infringement of U.S. Patent No. 7,024,214)

25. Microsoft repeats and realleges the allegations of paragraphs 1 through 14 of these Counterclaims in their entirety.

26. On information and belief, Motorola has infringed, induced infringement of and/or contributorily infringed and continues to infringe, induce infringement of and/or contributorily infringe, at least independent claim 55 of the '214 Patent, pursuant to 35 U.S.C. § 271 (a), (b) and/or (c), literally or under the doctrine of equivalents, in this district and elsewhere in the United States, by making, using, selling, offering to sell and/or importing products such as Android smartphones including, *e.g.*, the Motorola Droid X and Motorola Droid 2.

27. On information and belief, instructional materials provided by Motorola (available at, *e.g.*, www.motorola.com/Support/US-EN/Consumer-Support/Mobile-Phones/Motorola+DROID+X and www.motorola.com/Support/US-EN/Consumer-Support/Mobile-Phones/Motorola+DROID+2) instruct customers how to use these products in accordance with at least independent claim 55 of the '214 Patent.

28. Microsoft is entitled to recover damages adequate to compensate it for Motorola's infringement, but in no event, less than a reasonable royalty.

29. Motorola's infringing activities have caused and will continue to cause Microsoft irreparable harm unless the infringement is enjoined by this Court.

MICROSOFT'S FOURTH COUNT

(Motorola's Infringement of U.S. Patent No. 7,493,130)

30. Microsoft repeats and realleges the allegations of paragraphs 1 through 14 of these Counterclaims in their entirety.

31. On information and belief, Motorola has infringed, induced infringement of and/or contributorily infringed and continues to infringe, induce infringement of and/or contributorily infringe, at least independent claim 2 of the '130 Patent, pursuant to 35 U.S.C. § 271 (a), (b) and/or (c), literally or under the doctrine of equivalents, in this district and elsewhere in the United States, by making, using, selling, offering to sell and/or importing products such as Android smartphones including, *e.g.*, the Motorola Droid X and Motorola Droid 2.

32. On information and belief, instructional materials provided by Motorola (available at, *e.g.*, www.motorola.com/Support/US-EN/Consumer-Support/Mobile-Phones/Motorola+DROID+X and www.motorola.com/Support/US-EN/Consumer-Support/Mobile-Phones/Motorola+DROID+2) instruct customers how to use these products in accordance with at least independent claim 2 of the '130 Patent.

33. Microsoft is entitled to recover damages adequate to compensate it for Motorola's infringement, but in no event, less than a reasonable royalty.

34. Motorola's infringing activities have caused and will continue to cause Microsoft irreparable harm unless the infringement is enjoined by this Court.

MICROSOFT'S FIFTH COUNT

(Motorola's Infringement of U.S. Patent No. 7,383,460)

35. Microsoft repeats and realleges the allegations of paragraphs 1 through 14 of these Counterclaims in their entirety.

36. On information and belief, Motorola has infringed, induced infringement of and/or contributorily infringed and continues to infringe, induce infringement of and/or contributorily infringe, at least independent claim 7 of the '460 Patent, pursuant to 35 U.S.C.

§ 271 (a), (b) and/or (c), literally or under the doctrine of equivalents, in this district and elsewhere in the United States, by making, using, selling, offering to sell and/or importing products such as Android smartphones including, *e.g.*, the Motorola Droid X and Motorola Droid 2.

37. On information and belief, instructional materials provided by Motorola (available at, *e.g.*, www.motorola.com/Support/US-EN/Consumer-Support/Mobile-Phones/Motorola+DROID+X and www.motorola.com/Support/US-EN/Consumer-Support/Mobile-Phones/Motorola+DROID+2) instruct customers how to use applications that cause these products to operate in accordance with at least independent claim 7 of the '460 Patent.

38. Microsoft is entitled to recover damages adequate to compensate it for Motorola's infringement, but in no event, less than a reasonable royalty.

39. Motorola's infringing activities have caused and will continue to cause Microsoft irreparable harm unless the infringement is enjoined by this Court.

MICROSOFT'S SIXTH COUNT

(Motorola's Infringement of U.S. Patent No. 6,897,904)

40. Microsoft repeats and realleges the allegations of paragraphs 1 through 14 of these Counterclaims in their entirety.

41. On information and belief, Motorola has infringed, induced infringement of and/or contributorily infringed and continues to infringe, induce infringement of and/or contributorily infringe, at least independent claim 12 of the '904 Patent, pursuant to 35 U.S.C. § 271 (a), (b) and/or (c), literally or under the doctrine of equivalents, in this district and elsewhere in the United States, by making, using, selling, offering to sell and/or importing products such as set-top boxes that contain digital video recorder (DVR) functionality including, *e.g.*, the Motorola DCH6416.

42. On information and belief, instructional materials provided by Motorola (available at, *e.g.*, <http://www.motorola.com/Consumers/US-EN/Consumer-Product-and->

Services/Home-Digital-Video/DCH6416-US-EN) instruct customers how to use these products in accordance with at least independent claim 12 of the '904 Patent.

43. Microsoft is entitled to recover damages adequate to compensate it for Motorola's infringement, but in no event, less than a reasonable royalty.

44. Motorola's infringing activities have caused and will continue to cause Microsoft irreparable harm unless the infringement is enjoined by this Court.

MICROSOFT'S SEVENTH COUNT

(Motorola's Infringement of U.S. Patent No. 6,785,901)

45. Microsoft repeats and realleges the allegations of paragraphs 1 through 14 of these Counterclaims in their entirety.

46. On information and belief, Motorola has infringed, induced infringement of and/or contributorily infringed and continues to infringe, induce infringement of and/or contributorily infringe, at least independent claim 1 of the '901 Patent, pursuant to 35 U.S.C. § 271 (a), (b) and/or (c), literally or under the doctrine of equivalents, in this district and elsewhere in the United States, by making, using, selling, offering to sell and/or importing products such as set-top boxes that contain digital video recorder (DVR) functionality including, *e.g.*, the Motorola BMC9012.

47. On information and belief, instructional materials provided by Motorola (available at, *e.g.*, <http://www.motorola.com/Support/US-EN/Consumer-Support/Classic-Video-Products>, <http://broadband.custhelp.com/app/answers/list/p/592,656> and broadband.motorola.com/consumers/products/bmc9012/downloads/Moxi_ViewersGuide.pdf) instruct customers how to use these products in accordance with at least independent claim 1 of the '901 Patent.

48. Microsoft is entitled to recover damages adequate to compensate it for Motorola's infringement, but in no event, less than a reasonable royalty.

49. Motorola's infringing activities have caused and will continue to cause Microsoft irreparable harm unless the infringement is enjoined by this Court.

MICROSOFT'S EIGHTH COUNT

(Declaration of Non-Infringement of the '839, '899, '001, '333, '176, '544 and '370 Patents)

50. Microsoft repeats and realleges the allegations of paragraphs 1 through 7 of these Counterclaims in their entirety.

51. Microsoft has not been and is not now infringing any valid and enforceable claim of the '839, '899, '001, '333, '176, '544 or '370 Patents, either directly or indirectly, literally or under the doctrine of equivalents, willfully or otherwise. In light of Motorola's Complaint, there exists an actual controversy between Microsoft and Motorola regarding these patents.

MICROSOFT'S NINTH COUNT

(Declaration of Invalidity of the '839, '899, '001, '333, '176, '544 and '370 Patents)

52. Microsoft repeats and realleges the allegations of paragraphs 1 through 7 of these Counterclaims in their entirety.

53. Microsoft contends that the claims of the '839, '899, '001, '333, '176, '544 and '370 Patents are invalid for failure to comply with the conditions of patentability, including but not limited to 35 U.S.C. §§ 101, 102, 103, 111, 112, 113, and/or 133.

PRAYER FOR RELIEF

WHEREFORE, Microsoft prays for a judgment in its favor and against Motorola:

1. That Motorola take nothing by way of its Complaint;
2. That Microsoft has not been and is not now infringing, contributorily infringing, or inducing infringement of any valid and enforceable claim of the '839, '899, '001, '333, '176, '544 and '370 Patents, literally or under the doctrine of equivalents, willfully or otherwise;
3. That the '839, '899, '001, '333, '176, '544 and '370 Patents are invalid;
4. That the Microsoft Asserted Patents are valid and enforceable;

5. That Motorola has infringed the Microsoft Asserted Patents;
6. That Motorola, and all persons acting in privity or concert with, or otherwise controlled by Motorola, be permanently enjoined from continued infringement of the Microsoft Asserted Patents;
7. That Microsoft be awarded damages for Motorola's infringement of the Microsoft Asserted Patents, including pre-judgment and post-judgment interest; and
8. That Microsoft be awarded its expenses, costs, and attorney's fees under 35 U.S.C. § 285, along with any other and further relief as the Court deems just and proper.

DATED this 23rd day of December 2010.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 23, 2010, 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 receive electronically Notices of Electronic Filing.

Respectfully submitted,

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