

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

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

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MOTOROLA MOBILITY, INC.,)
	Plaintiff,)
)
v.)
)
MICROSOFT CORPORATION,)
	Defendant.)
<hr/>)
MICROSOFT CORPORATION,)
	Counterclaim Plaintiff,)
)
v.)
)
MOTOROLA MOBILITY, INC.,)
	Counterclaim Defendant.)
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JURY TRIAL DEMANDED

**MOTOROLA MOBILITY, INC.’S FIRST AMENDED ANSWER, DEFENSES,
AND COUNTERCLAIMS TO MICROSOFT CORPORATION’S COUNTERCLAIMS**

Plaintiff and Counterclaim Defendant Motorola Mobility, Inc. (“Motorola Mobility”) for its first amended answer, defenses and counterclaims to Defendant and Counterclaim Plaintiff Microsoft Corporation’s (“Microsoft’s”) Counterclaims, states as follows. All allegations not expressly admitted are denied.

MICROSOFT’S COUNTERCLAIMS

No response is required to the averments of the unnumbered opening paragraph of Microsoft’s Counterclaims. If a response is required, those allegations are denied.

PARTIES

1. On information and belief, Motorola Mobility admits that 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. Motorola Mobility admits that it is a corporation organized and existing under the laws of the State of Delaware, having a principal place of business at 600 North U.S. Highway 45, Libertyville, Illinois 60048.

3. Motorola Mobility states that Microsoft's Counterclaims do not include a numbered Paragraph 3.

JURISDICTION AND VENUE

4. Motorola Mobility incorporates by reference its responses to Paragraphs 1-3 above.

5. Motorola Mobility admits that Microsoft's Counterclaims purport to be brought 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, but denies any wrongdoing or liability on its own behalf for at least the reasons stated herein. Motorola Mobility further admits that this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 & 1338(a). Except as expressly admitted herein, Motorola Mobility denies the allegations of Paragraph 5.

6. Motorola Mobility admits that venue is proper in this Judicial District under 28 U.S.C. §§ 1391(b), (c), (d), and 1400(b), and admits that this Court has personal jurisdiction over Motorola Mobility for the counterclaims. Except as expressly admitted herein, Motorola Mobility denies the allegations of Paragraph 6.

7. Motorola Mobility admits that this Court has personal jurisdiction over Motorola Mobility. Except as expressly admitted herein, Motorola Mobility denies the allegations of Paragraph 7.

THE MICROSOFT ASSERTED PATENTS

8. Motorola Mobility admits that the '536 Patent states on its face that it is titled "Simulating Gestures of A Pointing Device Using A Stylus And Providing Feedback Thereto," admits that the '536 Patent states on its face that it issued on September 14, 2004, and admits that the '536 Patent purports to name Leroy B. Keely, David F. Jones, David Switzer, Michael Hinchung Tsang, and William Hong Vong as inventors. Motorola Mobility is without knowledge or information sufficient to form a belief as to the truth of the allegations concerning Microsoft's purported ownership of all right, title, and interest in and to the '536 Patent and, therefore, denies those allegations. Except as expressly admitted herein, Motorola Mobility denies the allegations of Paragraph 8.

9. Motorola Mobility admits that the '853 Patent states on its face that it is titled "Highlevel Active Pen Matrix," admits that the '853 Patent states on its face that it issued on May 24, 2005, and admits that the '853 Patent purports to name Leroy B. Keely, Charlton E. Lui, David Jones, Ryan Edward Cukierman, Susanne Alysia Clark Cazzanti, Marieke Iwema, and Robert Jarrett as inventors. Motorola Mobility is without knowledge or information sufficient to form a belief as to the truth of the allegations concerning Microsoft's purported ownership of all right, title, and interest in and to the '853 Patent and, therefore, denies those allegations. Except as expressly admitted herein, Motorola Mobility denies the allegations of Paragraph 9.

10. Motorola Mobility admits that the '214 Patent states on its face that it is titled "Synchronizing Over A Number Of Synchronization Mechanisms Using Flexible Rules," admits that the '214 Patent states on its face that it issued on April 4, 2006, and admits that the '214

Patent purports to name Shawn Domenic Loveland as the inventor. Motorola Mobility is without knowledge or information sufficient to form a belief as to the truth of the allegations concerning Microsoft's purported ownership of all right, title, and interest in and to the '214 Patent and, therefore, denies those allegations. Except as expressly admitted herein, Motorola Mobility denies the allegations of Paragraph 10.

11. Motorola Mobility admits that the '130 Patent states on its face that it is titled "Synchronizing Over A Number Of Synchronization Mechanisms Using Flexible Rules," admits that the '130 Patent states on its face that it issued on February 17, 2009, and admits that the '130 Patent purports to name Shawn Domenic Loveland as the inventor. Motorola Mobility is without knowledge or information sufficient to form a belief as to the truth of the allegations concerning Microsoft's purported ownership of all right, title, and interest in and to the '130 Patent and, therefore, denies those allegations. Except as expressly admitted herein, Motorola Mobility denies the allegations of Paragraph 11.

12. Motorola Mobility admits that the '460 Patent states on its face that it is titled "Method And System For Configuring A Timer," admits that the '460 Patent states on its face that it issued on June 3, 2008, and admits that the '460 Patent purports to name Bruce J. Sherwin, Jr. and Eric Nelson as inventors. Motorola Mobility is without knowledge or information sufficient to form a belief as to the truth of the allegations concerning Microsoft's purported ownership of all right, title, and interest in and to the '460 Patent and, therefore, denies those allegations. Except as expressly admitted herein, Motorola Mobility denies the allegations of Paragraph 12.

13. Motorola Mobility admits that the '904 Patent states on its face that it is titled "Method And System For Selecting Among Multiple Tuners," admits that the '904 Patent states

on its face that it issued on May 24, 2005, and admits that the '904 Patent purports to name Peter J. Potrebic and Geoffrey Smith as inventors. Motorola Mobility is without knowledge or information sufficient to form a belief as to the truth of the allegations concerning Microsoft's purported ownership of all right, title, and interest in and to the '904 Patent and, therefore, denies those allegations. Except as expressly admitted herein, Motorola Mobility denies the allegations of Paragraph 13.

14. Motorola Mobility admits that the '901 Patent states on its face that it is titled "Altering Locks On Programming Content," admits that the '901 Patent states on its face that it issued on August 31, 2004, and admits that the '901 Patent purports to name Steven M. Horiwitz and Jeff Yaksick as inventors. Motorola Mobility is without knowledge or information sufficient to form a belief as to the truth of the allegations concerning Microsoft's purported ownership of all right, title, and interest in and to the '901 Patent and, therefore, denies those allegations. Except as expressly admitted herein, Motorola Mobility denies the allegations of Paragraph 14.

MICROSOFT'S FIRST COUNT
(Infringement of U.S. Patent No. 6,791,536)

15. Motorola Mobility incorporates by reference its responses to Paragraphs 1-14 above.

16. Motorola Mobility denies each and every allegation of Paragraph 16.

17. Motorola Mobility denies each and every allegation of Paragraph 17.

18. Motorola Mobility denies each and every allegation of Paragraph 18.

19. Motorola Mobility denies each and every allegation of Paragraph 19.

MICROSOFT'S SECOND COUNT
(Infringement of U.S. Patent No. 6,897,853)

20. Motorola Mobility incorporates by reference its responses to Paragraphs 1-14 above.

21. Motorola Mobility denies each and every allegation of Paragraph 21.
22. Motorola Mobility denies each and every allegation of Paragraph 22.
23. Motorola Mobility denies each and every allegation of Paragraph 23.
24. Motorola Mobility denies each and every allegation of Paragraph 24.

MICROSOFT'S THIRD COUNT
(Infringement of U.S. Patent No. 7,024,214)

25. Motorola Mobility incorporates by reference its responses to Paragraphs 1-14
above.

26. Motorola Mobility denies each and every allegation of Paragraph 26.
27. Motorola Mobility denies each and every allegation of Paragraph 27.
28. Motorola Mobility denies each and every allegation of Paragraph 28.
29. Motorola Mobility denies each and every allegation of Paragraph 29.

MICROSOFT'S FOURTH COUNT
(Infringement of U.S. Patent No. 7,493,130)

30. Motorola Mobility incorporates by reference its responses to Paragraphs 1-14
above.

31. Motorola Mobility denies each and every allegation of Paragraph 31.
32. Motorola Mobility denies each and every allegation of Paragraph 32.
33. Motorola Mobility denies each and every allegation of Paragraph 33.
34. Motorola Mobility denies each and every allegation of Paragraph 34.

MICROSOFT'S FIFTH COUNT
(Infringement of U.S. Patent No. 7,383,460)

35. Motorola Mobility incorporates by reference its responses to Paragraphs 1-14
above.

36. Motorola Mobility denies each and every allegation of Paragraph 36.

37. Motorola Mobility denies each and every allegation of Paragraph 37.

38. Motorola Mobility denies each and every allegation of Paragraph 38.

39. Motorola Mobility denies each and every allegation of Paragraph 39.

MICROSOFT'S SIXTH COUNT
(Infringement of U.S. Patent No. 6,897,904)

40. Motorola Mobility incorporates by reference its responses to Paragraphs 1-14
above.

41. Motorola Mobility denies each and every allegation of Paragraph 41.

42. Motorola Mobility denies each and every allegation of Paragraph 42.

43. Motorola Mobility denies each and every allegation of Paragraph 43.

44. Motorola Mobility denies each and every allegation of Paragraph 44.

MICROSOFT'S SEVENTH COUNT
(Infringement of U.S. Patent No. 6,785,901)

45. Motorola Mobility incorporates by reference its responses to Paragraphs 1-14
above.

46. Motorola Mobility denies each and every allegation of Paragraph 46.

47. Motorola Mobility denies each and every allegation of Paragraph 47.

48. Motorola Mobility denies each and every allegation of Paragraph 48.

49. Motorola Mobility denies each and every allegation of Paragraph 49.

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

50. Motorola Mobility incorporates by reference its responses to Paragraphs 1-7
above.

51. Motorola Mobility admits that an actual controversy exists between Microsoft and Motorola Mobility regarding the '839, '899, '001, '333, '176, '544, or '370 Patents. Except as expressly admitted herein, Motorola Mobility denies the allegations of Paragraph 51.

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

52. Motorola Mobility incorporates by reference its responses to Paragraphs 1-7 above.

53. Motorola Mobility denies each and every allegation of Paragraph 53.

MICROSOFT'S PRAYER FOR RELIEF

Motorola Mobility denies that Microsoft is entitled to any of the relief sought in its prayer for relief, including that requested in Paragraphs 1 through 8.

To the extent that Motorola Mobility has not specifically denied any allegation in Microsoft's Counterclaims, such allegations are denied.

DEFENSES TO MICROSOFT'S COUNTERCLAIMS

In addition to the defenses described below, Motorola Mobility expressly reserves the right to allege additional defenses as they become known during the course of discovery.

FIRST DEFENSE

The allegations and claims in the Microsoft Counterclaims, in whole or in part, fail to state a claim upon which relief may be granted.

SECOND DEFENSE

Motorola Mobility does not infringe and has not infringed, either directly, indirectly, contributorily, or by inducement, any claims of the '536 Patent, the '853 Patent, the '214 Patent,

the '130 Patent, the '460 Patent, the '904 Patent, or the '901 Patent (collectively, the "Microsoft Asserted Patents"), either literally or under the doctrine of equivalents, willfully or otherwise.

THIRD DEFENSE

Each and every asserted claim of the Microsoft Asserted Patents is invalid for failure to comply with the requirements of Title 35, United States Code § 1, *et seq.*, including without limitation §§ 101, 102, 103, 112, and/or 133, and/or improper inventorship and noncompliance under §§ 115 and/or 116.

FOURTH DEFENSE

By virtue of statements made, amendments made, or positions taken during the prosecution of the applications for the Microsoft Asserted Patents and/or related patents or patent applications, Microsoft is estopped from construing any claim of the Microsoft Asserted Patents to cover or include, either literally or under the doctrine of equivalents, any Motorola Mobility product, system, or process.

FIFTH DEFENSE

The Microsoft Counterclaims are barred, in whole or in part, by the equitable doctrines of laches, waiver, and/or estoppel.

SIXTH DEFENSE

To the extent Microsoft seeks damages for alleged infringement more than six years prior to filing of the Counterclaims, the relief sought by Microsoft is barred by 35 U.S.C. § 286.

SEVENTH DEFENSE

To the extent Microsoft seeks damages for alleged infringement prior to its giving actual or constructive notice of the Microsoft Asserted Patents to Motorola Mobility, the relief sought is barred by 35 U.S.C. § 287.

EIGHTH DEFENSE

To the extent Microsoft seeks injunctive relief for alleged infringement, the relief sought by Microsoft is unavailable because any alleged injury to Microsoft is not immediate or irreparable and because Microsoft has an adequate remedy at law for any alleged injury.

NINTH DEFENSE

Microsoft lacks standing to bring its claims at least with respect to the '901 Patent because, as shown on the face of the patent, Microsoft is not the assignee of the patent. For at least that reason, Microsoft has failed to name an essential party in this action.

TENTH DEFENSE

The relief sought by Microsoft is barred in whole or in part by the doctrine of patent exhaustion, and/or by reason of Motorola Mobility having an express or implied license to one or more of the Microsoft Asserted Patents, including without limitation, to the extent that any allegedly infringing products communicating with an Exchange server or using the AirSync or ActiveSync protocols are made, used or sold by Motorola Mobility under an express or implied license.

MOTOROLA MOBILITY'S COUNTERCLAIMS

Counterclaim Defendant Motorola Mobility counterclaims against Counterclaim Plaintiff Microsoft as follows:

PARTIES

1. Motorola Mobility is a corporation organized and existing under the laws of the State of Delaware, having a principal place of business at 600 North U.S. Highway 45, Libertyville, Illinois 60048. Motorola Mobility is a wholly-owned subsidiary of Motorola, Inc.

2. On information and belief, Microsoft is a corporation organized and existing under the laws of the State of Washington having its principal place of business at One Microsoft Way, Redmond, Washington 98052.

JURISDICTION AND VENUE

3. Motorola Mobility's counterclaims arise under the patent laws of the United States, 35 U.S.C. §§ 101, *et seq.* This Court has subject matter jurisdiction over these counterclaims for declaratory relief under the Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202, under the laws of the United States concerning actions relating to patents, 28 U.S.C. § 1338(a), and under 28 U.S.C. § 1331.

4. Venue is proper in this Judicial District for the counterclaims pursuant to 28 U.S.C. §§ 1391(b), (c), (d), and 1400(b).

5. Personal jurisdiction is proper in this Judicial District at least because Microsoft has consented to jurisdiction in this Judicial District in filing its permissive counterclaims against Motorola Mobility in this action.

FIRST COUNTERCLAIM
(Declaration of Non-Infringement and Invalidity of U.S. Patent No. 6,791,536)

6. Motorola Mobility incorporates by reference the allegations of Paragraphs 1-5 above.

7. An actual and justiciable controversy exists between Microsoft and Motorola Mobility with respect to the '536 Patent because Microsoft has brought an action against Motorola Mobility alleging that Motorola Mobility 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.

8. Motorola Mobility has not infringed the '536 Patent, either directly or indirectly, literally or under the doctrine of equivalents, willfully or otherwise, and is entitled to a declaration to that effect.

9. The '536 Patent is invalid for failure to comply with the requirements of Title 35, United States Code § 1, *et seq.*, including without limitation §§ 101, 102, 103, 112, and/or 133, and/or improper inventorship and noncompliance under §§ 115 and/or 116.

10. This is an exceptional case entitling Motorola Mobility to an award of its attorneys' fees incurred in connection with this action pursuant to 35 U.S.C. § 285.

SECOND COUNTERCLAIM
(Declaration of Non-Infringement and Invalidity of U.S. Patent No. 6,897,853)

11. Motorola Mobility incorporates by reference the allegations of Paragraphs 1-5 above.

12. An actual and justiciable controversy exists between Microsoft and Motorola Mobility with respect to the '853 Patent because Microsoft has brought an action against Motorola Mobility alleging that Motorola Mobility 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.

13. Motorola Mobility has not infringed the '853 Patent, either directly or indirectly, literally or under the doctrine of equivalents, willfully or otherwise, and is entitled to a declaration to that effect.

14. The '853 Patent is invalid for failure to comply with the requirements of Title 35, United States Code § 1, *et seq.*, including without limitation §§ 101, 102, 103, 112, and/or 133, and/or improper inventorship and noncompliance under §§ 115 and/or 116.

15. This is an exceptional case entitling Motorola Mobility to an award of its attorneys' fees incurred in connection with this action pursuant to 35 U.S.C. § 285.

THIRD COUNTERCLAIM
(Declaration of Non-Infringement and Invalidity of U.S. Patent No. 7,024,214)

16. Motorola Mobility incorporates by reference the allegations of Paragraphs 1-5 above.

17. An actual and justiciable controversy exists between Microsoft and Motorola Mobility with respect to the '214 Patent because Microsoft has brought an action against Motorola Mobility alleging that Motorola Mobility 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.

18. Motorola Mobility has not infringed the '214 Patent, either directly or indirectly, literally or under the doctrine of equivalents, willfully or otherwise, and is entitled to a declaration to that effect.

19. The '214 Patent is invalid for failure to comply with the requirements of Title 35, United States Code § 1, *et seq.*, including without limitation §§ 101, 102, 103, 112, and/or 133, and/or improper inventorship and noncompliance under §§ 115 and/or 116.

20. This is an exceptional case entitling Motorola Mobility to an award of its attorneys' fees incurred in connection with this action pursuant to 35 U.S.C. § 285.

FOURTH COUNTERCLAIM
(Declaration of Non-Infringement and Invalidity of U.S. Patent No. 7,493,130)

21. Motorola Mobility incorporates by reference the allegations of paragraphs 1-5 above.

22. An actual and justiciable controversy exists between Microsoft and Motorola Mobility with respect to the '130 Patent because Microsoft has brought an action against Motorola Mobility alleging that Motorola Mobility 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.

23. Motorola Mobility has not infringed the '130 Patent, either directly or indirectly, literally or under the doctrine of equivalents, willfully or otherwise, and is entitled to a declaration to that effect.

24. The '130 Patent is invalid for failure to comply with the requirements of Title 35, United States Code § 1, *et seq.*, including without limitation §§ 101, 102, 103, 112, and/or 133, and/or improper inventorship and noncompliance under §§ 115 and/or 116.

25. This is an exceptional case entitling Motorola Mobility to an award of its attorneys' fees incurred in connection with this action pursuant to 35 U.S.C. § 285.

FIFTH COUNTERCLAIM
(Declaration of Non-Infringement and Invalidity of U.S. Patent No. 7,383,460)

26. Motorola Mobility incorporates by reference the allegations of paragraphs 1-5 above.

27. An actual and justiciable controversy exists between Microsoft and Motorola Mobility with respect to the '460 Patent because Microsoft has brought an action against Motorola Mobility alleging that Motorola Mobility 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.

28. Motorola Mobility has not infringed the '460 Patent, either directly or indirectly, literally or under the doctrine of equivalents, willfully or otherwise, and is entitled to a declaration to that effect.

29. The '460 Patent is invalid for failure to comply with the requirements of Title 35, United States Code § 1, *et seq.*, including without limitation §§ 101, 102, 103, 112, and/or 133, and/or improper inventorship and noncompliance under §§ 115 and/or 116.

30. This is an exceptional case entitling Motorola Mobility to an award of its attorneys' fees incurred in connection with this action pursuant to 35 U.S.C. § 285.

SIXTH COUNTERCLAIM

(Declaration of Non-Infringement and Invalidity of U.S. Patent No. 6,897,904)

31. Motorola Mobility incorporates by reference the allegations of Paragraphs 1-5 above.

32. An actual and justiciable controversy exists between Microsoft and Motorola Mobility with respect to the '904 Patent because Microsoft has brought an action against Motorola Mobility alleging that Motorola Mobility 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.

33. Motorola Mobility has not infringed the '904 Patent, either directly or indirectly, literally or under the doctrine of equivalents, willfully or otherwise, and is entitled to a declaration to that effect.

34. The '904 Patent is invalid for failure to comply with the requirements of Title 35, United States Code § 1, *et seq.*, including without limitation §§ 101, 102, 103, 112, and/or 133, and/or improper inventorship and noncompliance under §§ 115 and/or 116.

35. This is an exceptional case entitling Motorola Mobility to an award of its attorneys' fees incurred in connection with this action pursuant to 35 U.S.C. § 285.

SEVENTH COUNTERCLAIM

(Declaration of Non-Infringement and Invalidity of U.S. Patent No. 6,785,901)

36. Motorola Mobility incorporates by reference the allegations of paragraphs 1-5 above.

37. An actual and justiciable controversy exists between Microsoft and Motorola Mobility with respect to the '901 Patent because Microsoft has brought an action against Motorola Mobility alleging that Motorola Mobility 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.

38. Motorola Mobility has not infringed the '901 Patent, either directly or indirectly, literally or under the doctrine of equivalents, willfully or otherwise, and is entitled to a declaration to that effect.

39. The '901 Patent is invalid for failure to comply with the requirements of Title 35, United States Code § 1, *et seq.*, including without limitation §§ 101, 102, 103, 112, and/or 133, and/or improper inventorship and noncompliance under §§ 115 and/or 116.

40. This is an exceptional case entitling Motorola Mobility to an award of its attorneys' fees incurred in connection with this action pursuant to 35 U.S.C. § 285.

MOTOROLA MOBILITY'S PRAYER FOR RELIEF

WHEREFORE, Motorola Mobility respectfully requests that the Court enter a judgment on the Counterclaims as follows:

- A. Adjudging that each and every claim of the '536 Patent, the '853 Patent, the '214 Patent, the '130 Patent, the '460 Patent, the '904 Patent, or the '901 Patent (collectively, the "Microsoft Asserted Patents"), be declared not infringed;

- B. Adjudging that each and every claim of the Microsoft Asserted Patents be declared invalid;
- C. Adjudging that Microsoft takes nothing by its Counterclaims and that all of its Counterclaims be dismissed with prejudice;
- D. Enjoining Microsoft and/or any of its successors and attorneys, and all persons in active concert or participation with any of them, from directly or indirectly asserting infringement or instituting any further action for infringement of the Microsoft Asserted Patents against Motorola Mobility, or any of its customers, end-users, agents, suppliers, contractors, consultants, successors, and assigns;
- E. Adjudging that that this is an exceptional case entitling Motorola Mobility to an award of its attorneys' fees for bringing and prosecuting this action, together with interest, and costs of the action, pursuant to 35 U.S.C. § 285; and
- F. Awarding to Motorola Mobility such other and further relief as this Court deems proper and just.

Dated: January 31, 2011

Respectfully submitted,

/s/ Edward M. Mullins

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MOTOROLA MOBILITY, INC.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motorola Mobility, Inc.'s Amended Answer, Defenses, and Counterclaims To Microsoft Corporation's Counterclaims was electronically filed with the Clerk of Court using the CM/ECF system on January 31, 2011, which will cause a true copy of same to be served this day upon all counsel of record included in the attached Service List by transmission of Notices of Electronic Filing generated by the CM/ECF system or in some other authorized manner for counsel of record that have not subscribed to receive electronically Notices of Electronic Filing.

/s/Edward M. Mullins
Edward M. Mullins

SERVICE LIST

Motorola Mobility, Inc. v. Microsoft Corp., Case No. 1:10-cv-24063-MORENO/TORRES

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