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FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JUL 20 2007

**MICHAEL W. BOBBINS
CLERK, U.S. DISTRICT COURT**

WILLIAM REBER, L.L.C.

*Plaintiff/Counterclaim
Defendant,*

v.

HELIO, L.L.C.

*Defendant/Counterclaim
Plaintiff.*

CIVIL ACTION NO. 07-CV-2382-JWD-JC

JURY TRIAL DEMANDED

**DEFENDANT/COUNTERCLAIM PLAINTIFF HELIO, L.L.C.'S ANSWER, DEFENSES,
AND COUNTERCLAIMS TO COMPLAINT**

ANSWER

Defendant/Counterclaim Plaintiff Helio, L.L.C. ("Helio"), by and through its attorneys, hereby answers the Complaint (the "Complaint") of Plaintiff/Counterclaim Defendant William Reber, L.L.C. ("Plaintiff" or "Reber"), as follows. The Parties have mutually agreed and stipulate that the filing and serving of this Answer on July 19, 2007 represents a timely filing in this matter.

NATURE OF THE LAWSUIT

1. Helio admits the allegations set forth in paragraph 1 of the Complaint, but denies any allegations of infringement.

PARTIES

2. Helio is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 2 of the Complaint, and therefore denies the same.

HELIO'S ANSWER, DEFENSES, AND COUNTERCLAIMS

3. Helio is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 3 of the Complaint, and therefore denies the same.

4. Helio admits the allegations set forth in paragraph 4 of the Complaint.

VENUE

6. Helio denies the allegations of paragraph 6¹ of the Complaint.

CLAIM

7. Helio denies the allegations of paragraph 7 of the Complaint.

8. Helio denies the allegations of paragraph 8 of the Complaint.

9. Helio denies the allegations of paragraph 9 of the Complaint.

NOTICE AND WILLFULNESS

10. Helio denies the allegations of paragraph 10 of the Complaint

RELATED CIVIL ACTION

11. Helio is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 11 of the Complaint, and therefore denies the same.

¹ Helio notes that Plaintiff's Complaint is missing a paragraph 5. For ease of reference, Helio has mirrored this omission in its Answer.

DEFENSES

12. Further answering the Complaint, Defendant asserts the following defenses. In doing so, Helio does assume the burden of proof with respect to those related matters that, pursuant to law, Plaintiff bears the burden.

First Defense

13. The manufacture, importation, offer of sale, and sale of the Kickflip Phone does not infringe, either willfully or otherwise, nor does it contribute to the infringement of, or actively induce others, to infringe any valid claim of U.S. Patent No. 5,701,258 (the "Patent-in-Suit").

Second Defense

14. The claims of the Patent-in-Suit are invalid for failure to comply with one or more of the provisions of the Patent Statute, 35 U.S.C. § 1, et seq., including but not limited to, 35 U.S.C. §§ 101, 102, 103, and 112.

Third Defense

15. Plaintiff is estopped from asserting that the Kickflip Phone infringes the Patent-in-Suit by reasons of actions taken and statements made by the applicants of that patent to the United States Patent and Trademark Office during the prosecution of the applications which lead to that patent.

Fourth Defense

16. Plaintiff's claims are barred, in whole or in part, by the doctrine of waiver.

Fifth Defense

17. Plaintiff's claims are barred, either whole or in part, by the doctrine of unclean hands.

Sixth Defense

18. Plaintiff's claims are barred, in whole or in part, by the doctrine of laches.

Seventh Defense

19. Plaintiff's claims are barred, in whole or in part, by express or implied license and/or the doctrine of patent exhaustion.

Eighth Defense

20. To the extent Plaintiff seeks damages for any alleged infringement prior to its giving actual notice of the patents to Helio, its claims are barred, pursuant to 35 U.S.C. § 287(a).

Ninth Defense

21. Plaintiff is not entitled to any injunctive relief because any alleged injury to Plaintiff is not immediate or irreparable, and Plaintiff has an adequate remedy at law for any alleged injury.

Tenth Defense

22. Plaintiff has failed to state a claim upon which relief may be granted.

COUNTERCLAIMS

23. Helio is a Delaware limited liability company have a principal place of business at 10960 Wilshire Boulevard, 6th Floor, Los Angeles, California 90024.

24. On information and belief, Plaintiff is an Illinois limited liability company having a principal place of business at 2812 Deerfield Lane, Rolling Meadows, Illinois 60008.

25. These counterclaims arise under federal law, and this Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338, 1367, 2201, and 2202, and the Patent Laws of the United States, 35 U.S.C. § 1, et seq.

26. Venue is proper under 28 U.S.C. § 1391 and 1400(b).

27. Plaintiff has asserted that Helio infringes U.S. Patent No. 5,701,258 (the "Patent-in-Suit"). An actual controversy exists between Plaintiff and Helio over the alleged infringement and invalidity of the Patent-in-Suit.

FIRST COUNTERCLAIM

28. Helio incorporates and realleges Paragraphs 26 through 30 as though fully set forth herein.

29. An actual and justiciable case or controversy exists between Plaintiff and Helio as to the infringement of the Patent-in-Suit.

30. Helio has not infringed and does not presently infringe, either willfully or otherwise, nor has it contributed to the infringement of, or actively induced others to infringe any claim of the Patent-in-Suit.

SECOND COUNTERCLAIM

31. Helio incorporates and realleges Paragraphs 26 through 35 as though fully set forth herein.

32. An actual and justiciable case or controversy exists between Plaintiff and Helio as to the validity of the Patent-in-Suit.

33. The claims of patent-in-suit are invalid for failure to meet one or more of the requirements of patentability set forth in the Patent Statute, including, but not limited to, 35 U.S.C. §§ 101, 102, 103, and 112.

PRAYER FOR RELIEF

FOR THESE REASONS, Helio respectfully requests that this Court enter judgment in their favor and grant the following relief.

- a. That Plaintiff take nothing by its action and the Complaint be dismissed with prejudice;
- b. That the Court enter a declaratory judgment that Helio has not infringed and does not presently infringe, either willfully or otherwise, nor has it contributed to the infringement of, or actively induced others to infringe, any claim of the Patent-in-Suit;
- c. That the Court enter a declaratory judgment that the Patent-in-Suit
- d. That the Court find that this is an exceptional case and award Helio its attorneys' fees in this action, pursuant to U.S.C. § 285;
- e. That the Court award Helio its costs and expenses; and
- f. That the Court grant Sharp such other relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Helio respectfully demands a trial by jury on all issues so triable.

DATED: July 19, 2007

Respectfully submitted,

Mark E. Weber

w/p John LaBarre

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ATTORNEYS FOR HELIO, L.L.C.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of
DEFENDANT/COUNTERCLAIM PLAINTIFF HELIO, L.L.C.'S ANSWER, DEFENSES,
AND COUNTERCLAIMS TO COMPLAINT has been served, via first class mail, upon all
counsel of record, as identified below, on July 19, 2007:

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