

**UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
United States Courthouse
219 S Dearborn Street
Chicago, Illinois**

Caption of Case

7CCA Docket No. _____

ERICH SPECHT, an individual and doing business)	Type of Action: Civil
as ANDROID DATA CORPORATION, and THE)	
ANDROID’S DUNGEON INCORPORATED,)	
)	
Plaintiffs/Counter-Defendants/Appellants,)	
v.)	Civil Action No. 09-cv-2572
)	
GOOGLE INC.,)	Judge Harry D. Leinenweber
)	
Defendant/Counter-Plaintiff/Appellees.)	Northern District , IL
)	Eastern Division

DOCKETING STATEMENT

I. Nature of the Litigation

This is a civil action arising from Google’s adoption of the Android mark to identify software. Plaintiffs claim that Google’s Android mark is confusingly similar to Plaintiffs’ registered Android Data mark. Plaintiffs filed suit against Google alleging trademark infringement and unfair competition arising under §§32 and 43 of the Lanham Act, 15 U.S.C. §§1114(1) (trademark infringement), 1125(a) (unfair competition), as well as a violation of the Illinois Deceptive Trade Practices Act, 815 ILCS 510/2, common law trademark infringement and contributory infringement.

II. Jurisdictional Statement

A. District Court

The District Court had original subject matter jurisdiction over this action

pursuant to 28 U.S.C. §1338(a), 28 U.S.C §1338(b) and supplemental jurisdiction over the state law claims under 28 U.S.C. §1367(a). The District Court also had subject matter jurisdiction pursuant to 28 U.S.C.A. § 1332, because this action is between citizens of different States and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

B. Court of Appeals

The Court of Appeals has jurisdiction over this direct appeal pursuant to 28 U.S.C. § 1291. This appeal arises from litigation commenced in the United States District Court, Northern District of Illinois, Eastern Division by Appellants Erich Specht, an Illinois resident, Android Data Corporation and The Android's Dungeon Incorporated, Illinois corporations with their principal place of business in Illinois, against Google, Inc., a Delaware corporation with its principal place of business in California. The District Court (Hon. Harry D. Leinenweber) granted summary judgment against Plaintiffs as to all of their claims in the Second Amended Complaint as well as two of Google's Counterclaims. Google then dismissed its remaining five counterclaims without prejudice. Plaintiffs appealed (11-1689) and this Court dismissed the appeal, *sua sponte*, as premature citing the possibility that Google could refile its dismissed counterclaims. Plaintiffs, thereafter, filed an unopposed motion for a Rule 54(b) certification. The District Court found that there was no just reason to delay entry of final judgment and entered a Rule 54(b) Final Judgment as to all counts of Plaintiffs' Second Amended Complaint and Counts I and III of Google's Counterclaims. (A Copy of the Court's Opinion and Final Judgment are attached hereto).

III. Timeliness of Appeal:

Final Judgment was entered on October 6, 2011;
Notice of Appeal was filed October 12, 2011.

IV. Prior Appellate Proceedings

10-2823 In re Erich Specht

Petition for Writ of Mandamus seeking disqualification of Judge Leinenweber based upon his disclosure that his wife is a board member and that he and his wife have a significant financial interest in AT&T, a distributor of Android powered devices. The Court of Appeals denied the Petition.

11-1689 Specht et al v. Google

Appeal from a final judgment. The District Court granted Google's motion to dismiss its remaining Counterclaims without prejudice and entered a final judgment. Plaintiffs filed a notice of appeal. The Court of Appeals *sua sponte* dismissed the appeal as premature because of the potential that Google could refile its counterclaims in the future.

Dated this: 12th day of October, 2011

Signed: s/ Martin J. Murphy

Martin J. Murphy
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CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I electronically filed the foregoing:

DOCKETING STATEMENT

with the Court using the CM/ECF system, which will serve the attached on all counsel of record.

Dated: March 22, 2011

s/ Martin J Murphy

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Harry D. Leinenweber	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	09 C 2572	DATE	10/6/2011
CASE TITLE	Specht, et al. v. Google, Inc.		

DOCKET ENTRY TEXT

For the reasons stated herein, Plaintiffs' Motion for Entry of Judgment under Fed. R. Civ. P 54(b) is granted.

■ [For further details see text below.]

Notices mailed by Judicial staff.

STATEMENT

Before the Court is Plaintiffs' motion for entry of judgment under Federal Rule of Civil Procedure 54(b). For the reasons stated below, there is no just reason to delay entry of a final judgment. Therefore, the unopposed motion for entry of a Rule 54(b) judgment is granted.

I. BACKGROUND

Plaintiffs filed a five count Second Amended Complaint against Google for: trademark infringement under the Lanham Act (Count I); unfair competition under the Lanham act (Count II); violation of Illinois Deceptive Trade Practices Act (Count III); common law trademark infringement (IV); and contributory infringement (Count V).

Google filed a seven count counterclaim against Plaintiffs for: cancellation of trademark registration (Count I); fraudulent procurement of registration (Count II); a declaratory judgment of invalidity and unenforceability of trademark rights due to abandonment (Count III); a declaratory judgment of invalidity and unenforceability due to fraudulent procurement (Count IV); declaratory judgment of non-infringement (Count V); unfair competition under the Lanham Act (Count VI); and common law unfair competition (Count VII).

On December 17, 2010, the Court entered summary judgment against Plaintiffs on the entire Second Amended Complaint and on Counts I and III of Google's counterclaims. On February 24, 2011, the Court granted Google's motion to dismiss is remaining counterclaims (Counts II, IV, V, VI, and VII) without prejudice. Plaintiffs filed a notice of appeal.

On August 22, 2011, the Court of Appeals *sua sponte* dismissed Plaintiffs' appeal as premature because of the potential that Google could refile its counterclaims in the future. In response to the dismissal of their appeal, Plaintiffs have filed this motion pursuant to Rules 54(b) and 60(b) of the Federal Rules of Civil Procedure.

II. DISCUSSION

Rule 54(b) provides that "[w]hen an action presents more than one claim for relief – whether as a claim, counterclaim, cross-claim, or third-party claim – or when multiple parties are involved, the court may

STATEMENT

direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay."

"Proper entry of judgment under Rule 54(b) requires first that the district court reach a judgment that is final in the sense that it completely disposes of a separate claim for relief or finally resolves all claims against a particular party or parties." *United States v. Ettrick Wood Products, Inc.*, 916 F.2d 1211, 1217 (7th Cir. 1990). The Court's ruling finally disposed of all claims against Google, and resolved Counts I and III of Google's counterclaims against Specht. Although Google has only dismissed the remaining counterclaims without prejudice, both parties agree that Google will not bring those claims again if the Court of Appeals affirms this Court. Furthermore, because the two counterclaims on which the Court found for Google sought only declaratory judgment and an order of cancellation of the trademark, no financial penalties or other calculations remain for this Court perform. Accordingly, there is simply nothing left for this Court to rule on in this case.

"Once it is established that the court's decision is "final," Rule 54(b) requires the district court to expressly find that "there is no just reason for delay" and to expressly direct entry of final judgment." *Id.* The court finds that there is no just reason for delay here, given that Plaintiffs and Defendant agree that the case is at an end barring reversal or remand on appeal. It would ill serve the interests of justice and judicial efficiency to require Google to litigate its dismissed counterclaims just to finalize the judgment.

III. CONCLUSION

For the reasons stated above, the court finds that there is no just reason to delay the entry of final judgment and the appeal of its summary judgment ruling. It therefore grants Plaintiffs' motion for entry of a Rule 54(b) final judgment as to all counts of Plaintiffs' Second Amended Complaint and Counts I and III of Google's counterclaims.

United States District Court
Northern District of Illinois
Eastern Division

Erich Specht, et al

JUDGMENT IN A CIVIL CASE

v.

Case Number: 09 C 2572

Google, Inc.

- ☐ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury rendered its verdict.
- ☒ Decision by Court. This action came to hearing before the Court. The issues have been heard and a decision has been rendered.

IT IS HEREBY ORDERED AND ADJUDGED that plaintiff's motion for entry of a rule 54(b) final judgment as to all counts of plaintiffs second amended complaint and Counts I and III of Google's counterclaims is granted.

There is no just reason to delay entry of final judgment.

Michael W. Dobbins, Clerk of Court

Date: 10/6/2011

/s/ Wanda A. Parker, Deputy Clerk