

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

ONE NUMBER CORPORATION,)	
)	
Plaintiff/Counterdefendant)	
)	CIVIL ACTION NO: 1:10-CV-0312-RLY-TAB
vs.)	
)	
GOOGLE, INC.)	
)	
Defendant/Counterplaintiff)	

ANSWER AND COUNTERCLAIMS

Google, Inc. (“Google”), for its Answer and Counterclaims to the Complaint of One Number Corporation (“One Number”), states:

Parties

1. One Number is a corporation organized and existing under the laws of the State of Indiana, with its principal place of business at 2701 Enterprise Drive, Suite 207, Anderson, Indiana 46013.

ANSWER: Google lacks sufficient information to form a belief as to the truth or falsity of the allegations set forth in Paragraph 1 of the Complaint, and therefore denies them.

2. Upon information and belief, Google is a corporation organized and existing under the laws of the State of California, and having a principal place of business at 1600 Amphitheatre Parkway, Mountain View, California 94043.

ANSWER: Google admits that it is a Delaware Corporation with its principal place of business in Mountain View, California. Except as expressly admitted, Google denies the allegations contained in this Paragraph.

Jurisdiction and Venue

3. This is an action for patent infringement of U.S. Patent No. 7,440,565 (“the ‘565 Patent”) and U.S. Patent No. 7,680,256 (“the ‘256 Patent”), arising under the Patent Laws of the United States, 35 U.S.C. §§ 1 *et seq.* True and complete copies of the ‘565 and ‘256 Patents are attached hereto respectively as Exhibit 1 and Exhibit 2.

ANSWER: Google admits that the Complaint purports to state a claim for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.*, and that this action purports to allege infringement of U.S. Patent No. 7,440,565 (“the ‘565 Patent”) and U.S. Patent No. 7,680,256 (“the ‘256 Patent”). Google lacks sufficient information to form a belief as to the truth or falsity of the allegations that Exhibit 1 and Exhibit 2 to the Complaint are “true and complete copies.” Except as expressly admitted, Google denies the allegations contained in this Paragraph.

4. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1338(a), and 1400(b).

ANSWER: Google admits that this Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a). Except as expressly admitted, Google denies the allegations contained in this Paragraph.

5. This Court has personal jurisdiction over the Defendant because, *inter alia*, the Defendant has committed, or aided, abetted, contributed to, or participated in the commission of, patent infringement that has led to foreseeable harm and injury to One Number in Anderson, Indiana. Defendant offers infringing services throughout Indiana and elsewhere.

ANSWER: Google admits that this Court has personal jurisdiction over it, but, except as expressly admitted, Google denies the allegations contained in this Paragraph. Google specifically denies any acts of patent infringement.

6. This Court also has personal jurisdiction over the Defendant by virtue of, *inter alia*, the Defendant's systematic and continuous contacts with Indiana. On information and belief, Defendant maintains twenty offices throughout the United States spanning from Mountain View, California to New York, New York.

ANSWER: Google admits that this Court has personal jurisdiction over it and that it maintains offices throughout the United States. Except as expressly admitted, Google denies the allegations contained in this Paragraph.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(b).

ANSWER: For purposes of this action only, Google does not contest that venue is proper as to Google. Except as expressly admitted, Google denies the allegations contained in this Paragraph.

Background

8. One Number owns by assignment all right, title, and interest in the '565 Patent and the '256 Patent, both of which are entitled "Contact Number Encapsulation System," which the United States Patent and Trademark Office duly and legally issued on October 21, 2008 and March 16, 2010, respectively. The claims of the '565 Patent and '256 Patent are valid and

enforceable. One Number has the right to sue for and obtain equitable relief and damages for infringement of the patents.

ANSWER: Google admits that Exhibit Nos. 1 and 2 to One Number's Complaint purport to be the '565 Patent and the '256 Patent, both of which, on their faces, are entitled "Contact Number Encapsulation System," issued on October 21, 2008 and March 16, 2010, respectively. Google denies that the claims of the '565 Patent and the '256 Patent are valid and enforceable and, except as expressly admitted, denies the allegations of Paragraph 8, including each legal conclusion set forth therein.

9. The '256 Patent was filed on August 15, 2005 and assigned U.S. Application No. 11/206,689 (the '689 Application").

ANSWER: Google admits that the on its face '256 Patent was assigned U.S. Application No. 11/206,689 (the '689 Application"). Google lacks sufficient information to form a belief as to the truth or falsity of One Number's allegation that the '256 Patent was filed on August 15, 2005. Answering further, Google is informed and believes that the public records at the United States Patent and Trademark Office indicate that the filing date of the '256 Patent is August 18, 2005. Except as expressly admitted, Google denies the allegations contained in this Paragraph.

10. The '565 Patent is a continuation application of the '689 Application and was filed on February 19, 2008.

ANSWER: Google admits that on its face the '565 Patent purports to be a continuation application of the '689 Application and was filed on February 19, 2008.

11. The '565 Patent and the '256 Patent have the same priority date of August 15, 2005, but work on the technology covered by these patents began before that date.

ANSWER: Google denies that '565 Patent and the '256 Patent have the same priority date of August 15, 2005, or that either the '565 Patent or the '256 Patent have a priority date of August 15, 2005. Google is without knowledge or information sufficient to form a belief as to the truth of the other allegations in this Paragraph, and therefore denies them on that basis.

12. The '565 Patent and the '256 Patent disclose and claim innovative telecommunications systems that allows users to obtain one phone number that is not tied to a specific location or phone, but rather is associated to the individual associated with the phone number. The system is capable of being configured, using a control panel, to allow the owner of the phone number to have multiple telecommunication devices (e.g. - home phone, work phone, cell phone, etc.) ring if the one phone number associated with the user is called. The control panel also allows the user to add, delete, or modify numbers that are contained in the calling list, allows users to temporarily deactivate numbers in the calling list, and provides various other patented features.

ANSWER: Google denies that the claims of the '565 Patent and '256 Patent are valid and enforceable. Google is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this Paragraph, and therefore denies them on that basis.

13. On information and belief, on or about July 3, 2007, Google acquired GrandCentral Communications ("GrandCentral"); Prior to Google's acquisition, GrandCentral provided services for managing individuals' voice communications (the "GrandCentral

Service”); and the GrandCentral Service was designed and created by GrandCentral based on One Number’s then patent pending technology.

ANSWER: Google admits that on or about July 2, 2007, it acquired GrandCentral Communications (“GrandCentral”) and that prior to Google’s acquisition, GrandCentral provided services for managing individuals’ voice communications (the “GrandCentral Service”). Except as expressly admitted, Google denies the allegations of this Paragraph.

14. Upon information and belief, GrandCentral was purportedly founded in late 2005 by Craig Walker and Vincent Paquet; GrandCentral stated that its services could give people “*One Number ...for life*™”; and the GrandCentral Service, in essence, provided many, if not all, of the features of One Number’s then patent pending technology.

ANSWER: Google admits that GrandCentral was founded in or around late 2005 by Craig Walker and Vincent Paquet, and that GrandCentral registered the valid United States Trademark “*One Number ...for life*™” Except as expressly admitted, Google denies the allegations of this Paragraph.

15. On July 11, 2007, shortly after Google acquired GrandCentral, One Number contacted both GrandCentral and Google to inform them of One Number’s pending patent application and provided both GrandCentral and Google with a copy of the published ‘689 Application (i.e. - U.S. Patent Publication No. 2007/0041550 A1), which has now issued as the ‘256 Patent. See Exhibit 3 attached hereto. Neither GrandCentral nor Google responded to OneNumber.

ANSWER: Google admits that on or around July 11, 2007, Craig Walker received a letter from Dean E. McConnell attaching a copy of U.S. Patent Publication No. 2007/0041550 A1

and that, upon information and belief, GrandCentral did not respond to the July 11, 2007 letter and that Google did not respond to the July 11, 2007 letter. Except as expressly admitted, Google denies the allegations contained in this Paragraph.

16. On or about March 12, 2009, Defendant announced the release of Google Voice. The core underlying technology that drives Google Voice is almost entirely based on the infringing technology Google acquired from GrandCentral and continues to infringe the '565 Patent and '256 Patent.

ANSWER: Google admits that it announced the release of Google Voice on or about March 12, 2009. Except as expressly admitted, Google denies the allegations in this Paragraph. Google specifically denies any acts of patent infringement.

COUNT I

Infringement of the '565 Patent by Google

17. One Number realleges and incorporates by reference the allegations set forth in paragraphs 1-16 above.

ANSWER: In responding to Paragraph 17, Google incorporates by reference its answers to Paragraphs 1-16 above.

18. Pursuant to 35 U.S.C. § 282, the '565 Patent is presumed valid.

ANSWER: Google denies that the claims of the '565 Patent are valid. Google further states that the remaining allegations of Paragraph 18 constitute legal conclusions to which no response is required.

19. Google has made, used, and offered services, and continues to make, use, and/or offer services within this Judicial District, including, the Google Voice services that infringe one or more valid claims of the '565 Patent. See Exhibit 4 attached hereto.

ANSWER: Google admits that it has transacted some level of business in this District. Google denies all remaining allegations of this Paragraph, including, but not limited to, that any Google service infringes any valid claim of the '565 patent.

20. Google continues its acts of patent infringement in violation of 35 U.S.C. § 271.

ANSWER: Google denies the allegations of this Paragraph.

21. As a direct and proximate consequence of Google's infringement of the '565 Patent, One Number has suffered and will continue to suffer substantial and irreparable injury and damages in an amount not yet determined for which One Number is entitled to relief

ANSWER: Google denies the allegations of this Paragraph.

COUNT II

Infringement of the '256 Patent by Google

22. One Number realleges and incorporates by reference the allegations set forth in paragraphs 1-21 above.

ANSWER: In responding to Paragraph 22, Google incorporates by reference its answers to Paragraphs 1-21 above.

23. Pursuant to 35 U.S.C. § 282, the '256 Patent is presumed valid.

ANSWER: Google denies that the claims of the '256 Patent are valid. Google further states that the remaining allegations of Paragraph 23 constitute legal conclusions to which no response is required.

24. Google has made, used, and offered services, and continues to make, use, and/or offer services within this Judicial District, including, the Google Voice services that infringe one or more valid claims of the '256 Patent. *See Exhibit 4 attached hereto.*

ANSWER: Google admits that it has transacted some level of business in this District. Google denies all remaining allegations of this Paragraph, including, but not limited to, that any Google service infringes any valid claim of the '256 patent.

25. Google continues its acts of patent infringement in violation of 35 U.S.C. § 271. As a direct and proximate consequence of Google's infringement of the '256 Patent, One Number has suffered and will continue to suffer substantial and irreparable injury and damages in an amount not yet determined for which One Number is entitled to relief.

ANSWER: Google denies the allegations of this Paragraph.

RESPONSE TO ONE NUMBER'S PRAYER FOR RELIEF

Google denies that One Number is entitled to any of the relief it has requested in its prayer for relief.

ADDITIONAL AND AFFIRMATIVE DEFENSES

Google asserts the following Affirmative Defenses set forth below. Google reserves the right to add additional defenses, including allegations of inequitable conduct, consistent with the facts discovered in the case.

1. Google has not committed and is not now committing any acts of infringement of the ‘565 Patent or the ‘256 Patent, directly, indirectly, or jointly, and Google has not induced or contributed to and is not inducing or contributing to any infringement of the ‘565 Patent or the ‘256 Patent.
2. One Number’s claims for contributory infringement are barred in whole or in part under 35 U.S.C. § 271(c) in view of the substantial non-infringing uses of such allegedly infringing product.
3. One Number is estopped from asserting that Google infringes one or more claims of the ‘565 Patent and ‘256 Patent, either literally or by application of the doctrine of equivalents, including pursuant to the Doctrine of Prosecution History Estoppel.
4. At least one claim of the ‘565 Patent is invalid for failure to satisfy one or more requirements of the Patent Act, 35 U.S.C. § 1, *et seq.*, including, but not limited to, the conditions of patentability set forth in 35 U.S.C. §§ 101, 102, 103, and 112.
5. Prior to filing suit, One Number has failed to provide adequate notice under 35 U.S.C. § 1 *et seq.* of any pending or issued application for the ‘565 Patent or the ‘256 Patent for the purposes of establishing or preserving any claim for damages.
6. One Number is not entitled to enhanced or increased damages for willful infringement because Google has not engaged in any conduct that meets the applicable standard for willful infringement.

7. One Number is not entitled to injunctive relief because any alleged injury to One Number is not immediate or irreparable, and One Number has an adequate remedy at law.
8. One Number cannot prove that this is an exceptional case justifying award of attorney fees against Google pursuant to 35 U.S.C. § 285.
9. One Number's Complaint fails to state a claim upon which relief can be granted.
10. Google reserves the right to include any further Additional or Affirmative Defenses after discovery or investigation, including that the '565 Patent and '256 Patent were procured by inequitable conduct, and that the claims alleged in the Complaint are barred, in whole or in part, by the doctrine of unclean hands.

COUNTERCLAIMS

Google, for its counterclaims against One Number, alleges as follows:

PARTIES

1. Counterclaimant Google is a corporation organized and existing under the laws of the State of Delaware, and having a place of business at 1600 Amphitheatre Parkway, Mountain View, California 94043.

2. Upon information and belief, counterclaim defendant One Number is a corporation organized and existing under the laws of the State of Indiana, with its principal place of business at 2701 Enterprise Drive, Suite 207, Anderson, Indiana 46013.

JURISDICTION AND VENUE

3. The counterclaims include claims for declaratory judgment of patent noninfringement and patent invalidity, and jurisdiction is proper under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, the Patent Laws of the United States, 35 U.S.C. §§ 1 et seq., concerning actions related to patents, and 28 U.S.C. §§ 1331, 1332, and 1338.

4. Venue is proper in this Court for these Counterclaims under 28 U.S.C. §§ 1391 and 1400(b).

5. This Court has personal jurisdiction over One Number because One Number's principal place of business is located in this District and by virtue of One Number's filing of the Complaint against Google in this Court.

GENERAL ALLEGATIONS

6. On March 16, 2010, One Number filed a Complaint against Google for infringement of U.S. Patent No. 7,440,565 ("the '565 Patent") and U.S. Patent No. 7,680,256 ("the '256 Patent").

7. An actual and justiciable controversy has arisen and presently exists between the parties to which Google desires a declaration of rights pursuant to 28 U.S.C. § 2201(a) and Rule 57 of the Federal Rules of Civil Procedure.

COUNT I:

REQUEST FOR DECLARATORY JUDGMENT OF NONINFRINGEMENT OF THE '565 PATENT

8. Google realleges and incorporates by reference the allegations set forth in paragraphs 1-7 above.

9. Google does not and has not infringed, contributed to the infringement of, or induced infringement of any valid claim of the '565 Patent, individually, jointly, under the Doctrine of Equivalents, or under any theory.

10. Google is entitled to a declaratory judgment that it is not infringing any valid claim of the '565 Patent literally, under the Doctrine of Equivalents, directly, indirectly, or jointly, or that it has not contributed to or induced the infringement of any valid claim of the '565 Patent. Google further seeks judgment declaring, under the Patent Laws of the United States, that

Google has not previously infringed the '565 Patent literally, under the Doctrine of Equivalents, directly, indirectly, or jointly, or contributed to or induced the infringement of any valid claim of the '565 Patent.

COUNT II:

**REQUEST FOR DECLARATORY JUDGMENT OF INVALIDITY
OF THE '565 PATENT**

11. Google realleges and incorporates by reference the allegations set forth in paragraphs 1-10 above.

12. The claims of the '565 Patent are invalid for failure to comply with the provisions of the Patent laws, 35 U.S.C. §§ 1 *et seq.*, including, but not limited to, one or more of 35 U.S.C. §§ 101, 102, 103, and/or 112.

13. Google is entitled to a declaratory judgment that the claims of the '565 Patent are invalid.

COUNT III:

**REQUEST FOR DECLARATORY JUDGMENT OF NONINFRINGEMENT
OF THE '256 PATENT**

14. Google realleges and incorporates by reference the allegations set forth in paragraphs 1-13 above.

15. Google does not and has not infringed, contributed to the infringement of, or induced infringement of any valid claim of the '256 Patent, individually, jointly, under the Doctrine of Equivalents, or under any theory.

16. Google is entitled to a declaratory judgment that it is not infringing any valid claim of the '256 Patent literally, under the Doctrine of Equivalents, directly, indirectly, or jointly, or that it has not contributed to or induced the infringement of any valid claim of the '256

Patent. Google further seeks judgment declaring, under the Patent Laws of the United States, that Google has not previously infringed the '256 Patent literally, under the Doctrine of Equivalents, directly, indirectly, or jointly, or contributed to or induced the infringement of any valid claim of the '256 Patent.

COUNT IV:

**REQUEST FOR DECLARATORY JUDGMENT OF INVALIDITY
OF THE '256 PATENT**

17. Google realleges and incorporates by reference the allegations set forth in paragraphs 1-16 above.

18. The claims of the '256 Patent are invalid for failure to comply with the provisions of the Patent laws, 35 U.S.C. §§ 1 *et seq.*, including, but not limited to, one or more of 35 U.S.C. §§ 101, 102, 103, and/or 112.

19. Google is entitled to a declaratory judgment that the claims of the '256 Patent are invalid.

PRAYER FOR RELIEF

WHEREFORE, Google respectfully prays that this Court:

A. Dismiss with prejudice the Complaint in its entirety and award One Number nothing by its Complaint;

B. Adjudge and declare that Google has not infringed, and is not infringing any valid claim of the '565 Patent under any theory;

C. Adjudge and declare that Google has not infringed, and is not infringing any valid claim of the '256 Patent under any theory;

D. Adjudge and declare that Google has not willfully infringed, and is not willfully infringing, any valid claim of the '565 Patent;

- E. Adjudge and declare that Google has not willfully infringed, and is not willfully infringing, any valid claim of the '256 Patent;
- F. Adjudge and declare that the claims of the '565 Patent are invalid;
- G. Adjudge and declare that the claims of the '256 Patent are invalid;
- H. Adjudge and declare that One Number's claims against Google are barred at least by Google's Additional and Affirmative defenses;
- I. Permanently enjoin One Number, its successors, and assigns, and anyone acting in concert therewith or on its behalf, from attempting to enforce the '565 Patent and/or the '256 Patent against Google or any parent, affiliate, or subsidiary of Google, or its respective officers, agents, employees, successors, and assigns;
- J. Award Google its costs and, if merited by the evidence, declare this case exceptional and award to Google its attorneys' fees and all recoverable costs and expenses pursuant to 35 U.S.C. § 285; and,
- K. Award to Google any other relief to which Google is entitled.

DEMAND FOR JURY TRIAL

Google demands a trial by jury on all issues in this case that may be properly submitted to a jury.

July 23, 2010

Respectfully submitted,

/s/ Todd G. Vare

Todd G. Vare

Jeff M. Barron

Jennifer Schuster

BARNES & THORNBURG LLP

11 South Meridian Street

Indianapolis, IN 46204

(317) 236-1313

(317) 231-7433 (Facsimile)

tvare@btlaw.com

jbarron@btlaw.com

jschuster@btlaw.com

Attorneys for Defendant Google Inc.

CERTIFICATE OF SERVICE

Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system on July 23, 2010. Parties may access this filing through the Court's system.

Alastair J. Warr
Dean E. McConnell
Scott S. Morrisson
Birk K. Billingsley
KRIEG DeVAULT LLP
One Indiana Square, Suite 2800
Indianapolis, IN 46204-2079

/s/ Todd G. Vare _____