



IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA Norfolk Division

LYCOS, INC.,)
Plaintiff,)
v.)
TIVO INC.,)
NETFLIX, INC., and)
BLOCKBUSTER, INC.,)
Defendants.)

Civil Action No. 2:07cv03 (RBS/JEB)

JEB

ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANT NETFLIX, INC.

I. ANSWER

Defendant Netflix, Inc. ("Netflix"), by and through its undersigned counsel, answers the Complaint for Patent Infringement ("Complaint") of plaintiff Lycos, Inc. ("Lycos"), as follows:

PARTIES

Lycos, Inc. v. Tivo, Inc. et al

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1. Netflix admits that Lycos avers it has its principal place of business at 100 Fifth Avenue, Waltham, Massachusetts 02451. Netflix lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining averments in paragraph 1 of the Complaint and therefore denies them.

2. Netflix lacks knowledge or information sufficient to form a belief as to the truth or falsity of the averments in paragraph 2 of the Complaint and therefore denies them.

3. Netflix lacks knowledge or information sufficient to form a belief as to the truth or falsity of the averments in paragraph 3 of the Complaint and therefore denies them.

4. Netflix admits that it is a Delaware corporation having an office and principal place of business at 100 Winchester Circle, Los Gatos, California, 95032.

5. Netflix lacks knowledge or information sufficient to form a belief as to the truth or falsity of the averments in paragraph 5 of the Complaint and therefore denies them.

JURISDICTION AND VENUE

6. Netflix admits that Lycos purports to state a claim for patent infringement arising under Title 35 of the United States Code. Netflix admits that this Court has subject matter jurisdiction over claims for patent infringement pursuant to 28 U.S.C. § 1338(a). Netflix denies every remaining averment contained in paragraph 6 of the Complaint.

7. Netflix lacks knowledge or information sufficient to form a belief as to the truth or falsity of the averments in paragraph 7 of the Complaint and therefore denies them.

8. Netflix lacks knowledge or information sufficient to form a belief as to the truth or falsity of the averments in paragraph 8 of the Complaint and therefore denies them.

9. Netflix lacks knowledge or information sufficient to form a belief as to the truth or falsity of the averments in paragraph 9 of the Complaint and therefore denies them.

10. Netflix lacks knowledge or information sufficient to form a belief as to the truth or falsity of the averments in paragraph 10 of the Complaint and therefore denies them.

11. Netflix denies the averments contained in paragraph 11 of the Complaint.

12. Netflix denies the averments contained in paragraph 12 of the Complaint.

13. Netflix admits it maintains a place of business and has subscribers in the Eastern District of Virginia. Netflix denies the remaining averments contained in paragraph 13 of the Complaint.

14. Netflix admits that it maintains a place of business in Virginia. Netflix denies the averments contained in paragraph 14 of the Complaint.

15. Netflix admits that it is subject to personal jurisdiction in the Eastern District of

Virginia. Netflix denies the remaining averments contained in paragraph 15 of the Complaint.

16. Netflix lacks knowledge or information sufficient to form a belief as to the truth or falsity of the averments in paragraph 16 of the Complaint and therefore denies them.

17. Netflix lacks knowledge or information sufficient to form a belief as to the truth or falsity of the averments in paragraph 17 of the Complaint and therefore denies them.

18. Netflix lacks knowledge or information sufficient to form a belief as to the truth or falsity of the averments in paragraph 18 of the Complaint and therefore denies them.

19. Netflix lacks knowledge or information sufficient to form a belief as to the truth or falsity of the averments in paragraph 19 of the Complaint and therefore denies them.

20. Netflix lacks knowledge or information sufficient to form a belief as to the truth or falsity of the averments in paragraph 20 of the Complaint and therefore denies them.

21. Netflix admits that it is a corporation and that it maintains a place of business and has subscribers in the Eastern District of Virginia. Netflix lacks knowledge or information sufficient to form a belief as to the truth or falsity of the averments relating to TiVo and Blockbuster in paragraph 21 of the Complaint and therefore denies them. Netflix denies every remaining averment contained in paragraph 21 of the Complaint.

22. Netflix denies the averments contained in paragraph 22 of the Complaint.

FIRST COUNT
(Patent Infringement of United States Patent No. 5,867,799)
35 U.S.C. §§ 271 et seq.

23. Netflix admits that United States Patent No. 5,867,799, on its face, bears an issue date of February 2, 1999, is titled "Information System and Method for Filtering a Massive Flow of Information Entities to Meet User Information Classification Needs," and lists Andrew K. Lang and Donald M. Kosak as inventors.

24. Netflix lacks knowledge or information sufficient to form a belief as to the truth or

falsity of the averments in paragraph 24 of the Complaint and therefore denies them.

25. Netflix lacks knowledge or information sufficient to form a belief as to the truth or falsity of the averments in paragraph 25 of the Complaint and therefore denies them.

26. Netflix lacks knowledge or information sufficient to form a belief as to the truth or falsity of the averments in paragraph 26 of the Complaint and therefore denies them.

27. Netflix lacks knowledge or information sufficient to form a belief as to the truth or falsity of the averments in paragraph 27 of the Complaint and therefore denies them.

28. Netflix denies the averments contained in paragraph 28 of the Complaint.

29. Netflix denies the averments contained in paragraph 29 of the Complaint.

30. Netflix admits that it provides an online DVD rental service accessible through the website www.netflix.com. Netflix denies every remaining averment contained in paragraph 30 of the Complaint.

31. Netflix lacks knowledge or information sufficient to form a belief as to the truth or falsity of the averments in paragraph 31 of the Complaint and therefore denies them.

32. Netflix lacks knowledge or information sufficient to form a belief as to the truth or falsity of the averments in paragraph 32 of the Complaint and therefore denies them.

33. Netflix lacks knowledge or information sufficient to form a belief as to the truth or falsity of the averments in paragraph 33 of the Complaint and therefore denies them.

34. Netflix denies the averments relating to Netflix contained in paragraph 34 of the Complaint. Netflix lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining averments in paragraph 34 of the Complaint and therefore denies them.

35. Netflix denies the averments relating to Netflix contained in paragraph 35 of the Complaint. Netflix lacks knowledge or information sufficient to form a belief as to the truth or

falsity of the remaining averments in paragraph 35 of the Complaint and therefore denies them.

SECOND COUNT
(Patent Infringement of United States Patent No. 5,983,214)
35 U.S.C. §§ 271 et seq.

36. Netflix admits that United States Patent No. 5,983,214, on its face, bears an issue date of November 9, 1999, is titled "System and Method Employing Individual User Content-Based Data and User Collaborative Feedback Data to Evaluate the Content of an Information Entity in a Large Information Communication Network," and lists Andrew K. Lang and Donald M. Kosak as inventors.

37. Netflix lacks knowledge or information sufficient to form a belief as to the truth or falsity of the averments in paragraph 37 of the Complaint and therefore denies them.

38. Netflix lacks knowledge or information sufficient to form a belief as to the truth or falsity of the averments in paragraph 38 of the Complaint and therefore denies them.

39. Netflix lacks knowledge or information sufficient to form a belief as to the truth or falsity of the averments in paragraph 39 of the Complaint and therefore denies them.

40. Netflix lacks knowledge or information sufficient to form a belief as to the truth or falsity of the averments in paragraph 40 of the Complaint and therefore denies them.

41. Netflix denies the averments contained in paragraph 41 of the Complaint.

42. Netflix denies the averments contained in paragraph 42 of the Complaint.

43. Netflix admits that it provides an online DVD rental service accessible through the website www.netflix.com. Netflix denies every remaining averment contained in paragraph 43 of the Complaint.

44. Netflix lacks knowledge or information sufficient to form a belief as to the truth or falsity of the averments in paragraph 44 of the Complaint and therefore denies them.

45. Netflix lacks knowledge or information sufficient to form a belief as to the truth or

falsity of the averments in paragraph 45 of the Complaint and therefore denies them.

46. Netflix lacks knowledge or information sufficient to form a belief as to the truth or falsity of the averments in paragraph 46 of the Complaint and therefore denies them.

47. Netflix denies the averments relating to Netflix contained in paragraph 47 of the Complaint. Netflix lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining averments in paragraph 47 of the Complaint and therefore denies them.

48. Netflix denies the averments relating to Netflix contained in paragraph 48 of the Complaint. Netflix lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining averments in paragraph 48 of the Complaint and therefore denies them.

REQUESTED RELIEF BY PLAINTIFF

Netflix denies that Lycos is entitled to the relief requested or to any relief whatsoever. Netflix denies any averment not expressly admitted herein.

II. AFFIRMATIVE DEFENSES

For its defenses to the Complaint, Netflix avers as follows:

FIRST DEFENSE – NON-INFRINGEMENT

1. Netflix has not infringed, and currently does not infringe, directly, indirectly, or in any other way, any claim of U.S. Patent No. 5,867,799 or U.S. Patent No. 5,983,214.

SECOND DEFENSE – INVALIDITY

2. U.S. Patent No. 5,867,799 and U.S. Patent No. 5,983,214 are invalid for failure to satisfy one or more of the conditions for patentability under Title 35, 35 U.S.C. §§ 100, et seq.

THIRD DEFENSE – LACHES

3. Lycos' claims are barred under the doctrines of laches.

FOURTH DEFENSE – PROSECUTION HISTORY ESTOPPEL

4. Prosecution history estoppel applies to preclude reliance by Lycos on the doctrine of equivalents.

III. PRAYER FOR RELIEF

WHEREFORE, Netflix prays for judgment with respect to Lycos' Complaint and Netflix' Affirmative Defenses as follows:

A. that Lycos' Complaint be dismissed with prejudice and that the relief requested by Lycos and any relief whatsoever be denied;

B. for entry of judgment that the claims of U.S. Patent No. 5,867,799 and U.S. Patent No. 5,983,214 are not infringed by Netflix and that Netflix is not liable as an infringer;

C. for entry of judgment that the claims of U.S. Patent No. 5,867,799 and U.S. Patent No. 5,983,214 are invalid and unenforceable;

D. that the case be declared exceptional and Netflix be awarded its attorneys' fees;
and

E. that Netflix have such other and further relief as the Court shall deem just and proper.

IV. DEMAND FOR JURY TRIAL

Netflix demands trial by jury on all issues so triable.

Dated: June 22, 2007

Respectfully submitted,

NETFLIX, INC.

By: 
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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of June, 2007, I caused a copy of the foregoing
ANSWER OF DEFENDANT NETFLIX, INC. to be served by First Class Mail, Postage

Prepaid as follows:

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