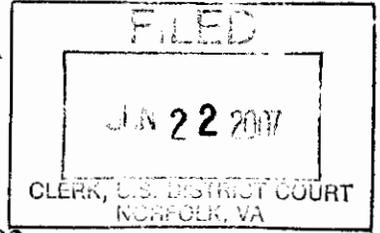


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division



LYCOS, INC.,
Plaintiff,
vs.
TIVO INC.,
NETFLIX, INC., and
BLOCKBUSTER, INC.
Defendants.

Civil Action No. 2:07cv03

J. [Signature]

**DEFENDANT TIVO INC.'S ANSWER, AFFIRMATIVE DEFENSES,
AND DEMAND FOR JURY TRIAL**

Defendant TiVo Inc., with an address and principal place of business at 2160 Gold Street, P.O. Box 2160, Alviso, California, 95002 ("TiVo") hereby answers the Complaint ("Complaint") of Plaintiff Lycos, Inc. ("Lycos"), as follows:

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

Doc. 38 Att. 28

THE PARTIES

1. TiVo admits on information and belief that Lycos avers it has its principal place of business at 100 Fifth Avenue, Waltham, Massachusetts 02451. TiVo 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. TiVo admits, on information and belief, that Lycos claims to be the owner of U.S. Patent Nos. 5,867,799 and 5,983,214. TiVo is without knowledge or information sufficient to form a belief as to the remainder of the allegations of paragraph 2, and therefore denies same.

3. TiVo admits the allegations of paragraph 3.

4. TiVo admits, on information and belief, the allegations of paragraph 4.

5. TiVo admits, on information and belief, the allegations of paragraph 5.

JURISDICTION AND VENUE

6. Answering paragraph 6 of the Complaint, TiVo admits that Lycos purports to bring this action under the patent laws of the United States, Title 35, United States Code. TiVo admits that Lycos purports to base subject matter jurisdiction on 28 U.S.C. §§ 1331 and 1338(a). Except as expressly admitted herein, TiVo denies each and every allegation contained in paragraph 6 of the Complaint.

7. TiVo denies the allegations contained in paragraph 7 of the Complaint.

8. TiVo denies the allegations contained in paragraph 8 of the Complaint.

9. TiVo denies the allegations contained in paragraph 9 of the Complaint.

10. TiVo admits that it is subject to personal jurisdiction in the Eastern District of Virginia. Except as expressly admitted herein, TiVo denies each and every allegation contained in paragraph 10 of the Complaint.

11. The allegations contained in paragraph 11 of the Complaint are directed to a third party. TiVo is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 11 of the Complaint, and therefore denies them.

12. The allegations contained in paragraph 12 of the Complaint are directed to a third party. TiVo is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 12 of the Complaint, and therefore denies them.

13. The allegations contained in paragraph 13 of the Complaint are directed to a third party. TiVo is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 13 of the Complaint, and therefore denies them.

14. The allegations contained in paragraph 14 of the Complaint are directed to a third party. TiVo is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 14 of the Complaint, and therefore denies them.

15. The allegations contained in paragraph 15 of the Complaint are directed to a third party. TiVo is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 15 of the Complaint, and therefore denies them.

16. The allegations contained in paragraph 16 of the Complaint are directed to a third party. TiVo is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 16 of the Complaint, and therefore denies them.

17. The allegations contained in paragraph 17 of the Complaint are directed to a third party. TiVo is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 17 of the Complaint, and therefore denies them.

18. The allegations contained in paragraph 18 of the Complaint are directed to a third party. TiVo is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 18 of the Complaint, and therefore denies them.

19. The allegations contained in paragraph 19 of the Complaint are directed to a third party. TiVo is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 19 of the Complaint, and therefore denies them.

20. The allegations contained in paragraph 20 of the Complaint are directed to a third party. TiVo is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 20 of the Complaint, and therefore denies them.

21. TiVo admits that it is a corporation and has subscribers in the Eastern District of Virginia. TiVo is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in paragraph 21 of the Complaint, and therefore denies them.

22. Answering paragraph 22 of the Complaint, TiVo admits that Lycos purports to base venue on 28 U.S.C. §§ 1391(b) and (c) and § 1400. Except as expressly admitted herein, TiVo denies each and every allegation contained in paragraph 22 of the Complaint.

FIRST COUNT

23. Answering paragraph 23 of the Complaint, TiVo admits that U.S. Patent No. 5,867,799 states on its face that it was issued on February 2, 1999, and that it is entitled "Information System and Method for Filtering a Massive Flow of Information Entities to meet User Information Classification Needs," and that it states that it was issued to Andrew K. Lang

and Donald M. Kosak. Except as expressly admitted herein, TiVo denies each and every allegation contained in paragraph 23 of the Complaint.

24. TiVo is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 24 of the Complaint, and therefore denies them.

25. TiVo denies the allegations contained in paragraph 25 of the Complaint.

26. TiVo denies the allegations contained in paragraph 26 of the Complaint.

27. Answering paragraph 27 of the Complaint, TiVo admits that it offers to sell and sells the Series2 DVR (Model Nos. TCD649080, TCD649180) and Series3 DVR (Model No. TCD648250B). Except as expressly admitted herein, TiVo denies each and every allegation contained in paragraph 27 of the Complaint.

28. The allegations contained in paragraph 28 of the Complaint are directed to a third party. TiVo is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 28 of the Complaint, and therefore denies them.

29. The allegations contained in paragraph 29 of the Complaint are directed to a third party. TiVo is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 29 of the Complaint, and therefore denies them.

30. The allegations contained in paragraph 30 of the Complaint are directed to a third party. TiVo is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 30 of the Complaint, and therefore denies them.

31. The allegations contained in paragraph 31 of the Complaint are directed to a third party. TiVo is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 31 of the Complaint, and therefore denies them.

32. The allegations contained in paragraph 32 of the Complaint are directed to a third party. TiVo is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 32 of the Complaint, and therefore denies them.

33. The allegations contained in paragraph 33 of the Complaint are directed to a third party. TiVo is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 33 of the Complaint, and therefore denies them.

34. TiVo denies the allegations related to TiVo contained in paragraph 34 of the Complaint. TiVo is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in paragraph 34 of the Complaint, and therefore denies them.

35. TiVo denies the allegations related to TiVo contained in paragraph 35 of the Complaint. TiVo is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in paragraph 35 of the Complaint, and therefore denies them.

SECOND COUNT

36. Answering paragraph 36 of the Complaint, TiVo admits that U.S. Patent No. 5,983,214 states on its face that it was issued on November 9, 1999, and that it is entitled "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 that it states that it was issued to Andrew K. Lang and Donald M. Kosak. Except as expressly admitted herein, TiVo denies each and every allegation contained in paragraph 36 of the Complaint.

37. TiVo is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 37 of the Complaint, and therefore denies them.

38. TiVo denies the allegations contained in paragraph 38 of the Complaint.

39. TiVo denies the allegations contained in paragraph 39 of the Complaint.

40. Answering paragraph 40 of the Complaint, TiVo admits that it offers for sale and sells the Series2 DVR (Model Nos. TCD649080, TCD649180) and Series3 DVR (Model No. TCD648250B). Except as expressly admitted herein, TiVo denies each and every allegation contained in paragraph 40 of the Complaint.

41. The allegations contained in paragraph 41 of the Complaint are directed to a third party. TiVo is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 41 of the Complaint, and therefore denies them.

42. The allegations contained in paragraph 42 of the Complaint are directed to a third party. TiVo is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 42 of the Complaint, and therefore denies them.

43. The allegations contained in paragraph 43 of the Complaint are directed to a third party. TiVo is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 43 of the Complaint, and therefore denies them.

44. The allegations contained in paragraph 44 of the Complaint are directed to a third party. TiVo is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 44 of the Complaint, and therefore denies them.

45. The allegations contained in paragraph 45 of the Complaint are directed to a third party. TiVo is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 45 of the Complaint, and therefore denies them.

46. The allegations contained in paragraph 46 of the Complaint are directed to a third party. TiVo is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 46 of the Complaint, and therefore denies them.

47. TiVo denies the allegations related to TiVo contained in paragraph 47 of the Complaint. TiVo is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in paragraph 47 of the Complaint, and therefore denies them.

48. TiVo denies the allegations related to TiVo contained in paragraph 48 of the Complaint. TiVo is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in paragraph 48 of the Complaint, and therefore denies them.

AFFIRMATIVE DEFENSES

TiVo asserts the following affirmative defenses. TiVo also reserves the right to add defenses that may be supported by the facts upon the completion of discovery.

First Affirmative Defense

49. TiVo has not infringed and does not infringe any of the claims of U.S. Patent Nos. 5,867,799 and 5,983,214 ("the patents-in-suit"), either literally or under the doctrine of equivalents, willfully or otherwise, and has not contributorily infringed, and has not induced infringement of any of the claims of the patents-in-suit.

Second Affirmative Defense

50. The claims of the patents-in-suit are invalid for failing to comply with one or more provisions of Title 35 of the United States Code, including without limitation 35 U.S.C. §§ 101, 102, 103, and 112, and are also unenforceable.

Third Affirmative Defense

51. Lycos is estopped, by virtue of the cancellations, amendments, representations, and concessions made to the Patent and Trademark Office during the pendency of the applications for the patents-in-suit, from construing any claim of those patents to have been infringed by TiVo.

Fourth Affirmative Defense

52. Lycos' claims for relief are barred by the doctrines of laches.

Fifth Affirmative Defense

53. Title 35 U.S.C. § 286 precludes Lycos from recovering any damages for alleged infringements, if any, that occurred more than six years prior to the commencement of this action.

PRAYER FOR RELIEF ON LYCOS'S COMPLAINT

WHEREFORE, TiVo prays for judgment against Lycos on Lycos' Complaint, as follows:

- A. That Lycos take nothing by its claims for relief;
- B. That Lycos' claims for relief be dismissed with prejudice;

C. That the Court enter judgment against Lycos and in favor of TiVo declaring that the claims of U.S. Patent Nos. 5,867,799 and 5,983,214 are not infringed by TiVo and that TiVo is not liable as an infringer;

D. That the Court enter judgment against Lycos and in favor of TiVo declaring that the claims of U.S. Patent Nos. 5,867,799 and 5,983,214 are invalid and unenforceable;

E. For a determination in TiVo's favor that this is an exceptional case under 35 U.S.C. § 285, and an award of attorneys' fees and costs to TiVo in this action; and

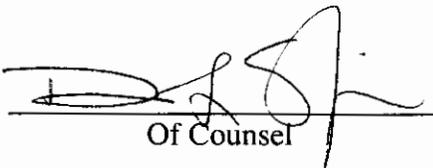
F. For such other and further relief as the Court deems just and equitable.

DEMAND FOR JURY TRIAL

Defendant TiVo Inc. hereby demands a trial by jury on all issues so triable.

Dated: June 22, 2007

TIVO INC.

By: 
Of Counsel

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Counsel for TiVo Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent, via first class mail, postage prepaid, to:

<p>Joel M. Freed, Esq. Raphael V. Lupo, Esq. Brian E. Ferguson, Esq. Anish R. Desai, Esq. McDermott Will & Emery, LLP 600 13th Street NW Washington, DC 20005</p>	<p>Kristan B. Burch, Esq. Kaufman & Canoles, P.C. 150 W. Main Street, Suite 2100 Norfolk, VA 23510</p> <p><i>Counsel for Lycos, Inc.</i></p>
<p>Michael E. Zeliger, Esq. Jeffrey L. Snow, Esq. George S. Haight, IV, Esq. Kirkpatrick & Lockhart Preston Gates Ellis LLP State Street Financial Center One Lincoln Street Boston, Massachusetts 02111</p>	<p>Eric C. Rusnak, Esq. Shanda N. Hastings, Esq. Kirkpatrick & Lockhart Preston Gates Ellis LLP 1601 K Street, N.W. Washington, D.C. 20006</p> <p><i>Counsel for Blockbuster, Inc.</i></p>
<p>Lynn H. Pasahow, Esq. Virginia K. DeMarchi, Esq. Darryl M. Woo, Esq. Darren E. Donnelly, Esq. Hector Ribera, Esq. Gaurav Mathur, Esq. Fenwick & West LLP Silicon Valley Center 801 California Street Mountain View, California 94041</p>	<p>Gregory N. Stillman, Esq. Brent L. VanNorman, Esq. Hunton & Williams LLP 500 E. Main Street, Suite 1000 Norfolk, Virginia 23510</p> <p><i>Counsel for Netflix, Inc.</i></p>

this 22nd day of June, 2007.

