

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

VISUAL INTERACTIVE PHONE
CONCEPTS, INC., a Nevada
Corporation,

Plaintiff,

vs.

GOOGLE, INC., a Delaware
Corporation,

Defendant.

Case No. 11-cv-12348

Hon. Lawrence P. Zatkoff

Mag. Judge Laurie Michelson

**VIPC'S ANSWER AND AFFIRMATIVE
DEFENSES TO GOOGLE'S FIRST
AMENDED COUNTERCLAIMS**

JURY TRIAL DEMANDED

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**VISUAL INTERACTIVE PHONE CONCEPTS, INC.'S
ANSWER AND AFFIRMATIVE DEFENSES TO GOOGLE, INC.'S
FIRST AMENDED COUNTERCLAIMS; JURY TRIAL DEMANDED**

Visual Interactive Phone Concepts, Inc. ("VIPC"), by its attorneys Mantese Honigman Rossman and Williamson, P.C. and Kohn and Associates, PLLC, and for its Answer to Google, Inc.'s ("Google's") First Amended Counterclaims, states as follows:

THE PARTIES

1. Upon information and belief, VIPC admits the allegations in paragraph 1 of the Counterclaims.
2. VIPC admits the allegations in paragraph 2 of the Counterclaims.

JURISDICTION AND VENUE

3. VIPC admits that venue is proper in this District.
4. VIPC admits that this Court has personal jurisdiction over VIPC for purposes of this action.
5. VIPC admits that this Court has subject matter jurisdiction over the patent law claims asserted in this case.

ALLEGED FACTS GIVING RISE TO THE COUNTERCLAIMS

6. VIPC admits the allegations in paragraph 6 of the Counterclaims.
7. VIPC admits that Google has denied infringement of the patents-in-suit and has alleged that the patents are invalid. VIPC relies on the allegations of infringement contained in its First Amended Complaint and denies that the patents are invalid. Therefore, VIPC admits there is an actual and justiciable case and controversy.
8. VIPC denies the allegations contained in paragraph 8 of the Counterclaims and relies on the allegations of infringement contained in its First Amended Complaint.

COUNT ONE – Declaratory Judgment of Non-Infringement of ‘361 Patent

9. VIPC repeats and realleges each answer set forth above as though fully set forth herein.

10. VIPC admits that Google has denied infringing the patents-in-suit and, therefore, an actual case or controversy exists between Google and VIPC as to whether the ‘361 patent is infringed by Google.

11. VIPC admits that a judicial declaration of infringement by Google is appropriate and denies that a judicial declaration of non-infringement is necessary or appropriate.

12. VIPC denies the allegations contained in paragraph 12 of the Counterclaims and relies on the allegations of infringement asserted in the First Amended Complaint.

COUNT TWO – Declaratory Judgment of Non-Infringement of ‘092 Patent

13. VIPC repeats and realleges each answer set forth above as though fully set forth herein.

14. VIPC admits that Google has denied infringing the patents-in-suit and, therefore, an actual case or controversy exists between Google and VIPC as to whether the ‘092 patent is infringed by Google.

15. VIPC admits that a judicial declaration of infringement by Google is appropriate and denies that a judicial declaration of non-infringement is necessary or appropriate.

16. VIPC denies the allegations contained in paragraph 16 of the Counterclaims and relies on the allegations of infringement asserted in the First Amended Complaint.

COUNT THREE – Declaratory Judgment of Invalidity of ‘361 Patent

17. VIPC repeats and realleges each answer set forth above as though fully set forth herein.

18. VIPC denies the allegations contained in paragraph 18 of the Counterclaims.
19. VIPC denies the allegations contained in paragraph 19 of the Counterclaims.

COUNT FOUR – Declaratory Judgment of Invalidity of ‘092 Patent

20. VIPC repeats and realleges each answer set forth above as though fully set forth herein.

21. VIPC denies the allegations contained in paragraph 21 of the Counterclaims.
22. VIPC denies the allegations contained in paragraph 22 of the Counterclaims.

EXCEPTIONAL CASE

23. VIPC denies the allegations contained in paragraph 23 of the Counterclaims.

VIPC’S AFFIRMATIVE DEFENSES TO GOOGLE’S COUNTERCLAIMS

VIPC asserts the following affirmative defenses without undertaking or otherwise shifting any applicable burdens of proof:

1. VIPC relies on the allegations contained in its First Amended Complaint and asserts that Google infringes the ‘361 and ‘092 patents.
2. VIPC asserts that the patents are valid, as confirmed in the USPTO’s re-examination of the ‘361 and ‘092 patents.
3. VIPC reserves the right to amend these affirmative defenses, and to allege any further defenses to the Counterclaims that become necessary or appropriate during the course of discovery.

PRAYER FOR RELIEF

WHEREFORE, VIPC respectfully requests judgment denying the relief requested by Google and granting the following relief:

A. That Google be adjudged to have infringed United States Patent No. 5,724,092 and Patent No. 5,606,361;

B. That Google be adjudged to have induced infringement of United States Patent No. 5,724,092 and Patent No. 5,606,361;

C. That Google be adjudged to have contributed to the infringement of United States Patent No. 5,724,092 and Patent No. 5,606,361;

D. That Google, its officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the Order, be permanently enjoined and restrained from infringing the United States Patent No. 5,724,092 and Patent No. 5,606,361;

E. That Google account for damages caused by the infringement of the United States Patent No. 5,724,092 and Patent No. 5,606,361;

F. That a judgment be entered against Google awarding VIPC all damages necessary to compensate VIPC pursuant to 35 U.S.C. § 284, and in no event less than a reasonable royalty, for infringement of the United States Patent No. 5,724,092 and Patent No. 5,606,361.

G. That the damages in this judgment be trebled pursuant to 35 U.S.C. § 284 for Google's knowing, intentional and willful infringement of United States Patent No. 5,724,092 and Patent No. 5,606,361.

H. That VIPC be awarded all pre-judgment and post-judgment interest and costs in accordance with 35 U.S.C. § 284.

I. That this case be judged an "exceptional" case within the meaning of 35 U.S.C. § 285 and VIPC awarded its reasonable attorneys' fees.

J. That VIPC receives such other and further relief as the Court may deem just, proper, and equitable under the circumstances.

DEMAND FOR JURY

Plaintiff respectfully demands a trial by jury on all claims and issues so triable.

Respectfully submitted,

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Dated: October 31, 2011

CERTIFICATE OF SERVICE

I, Sherri Sikorski, hereby certify that on October 31, 2011, I electronically filed VIPC's Answer and Affirmative Defenses to Google's Counterclaims with the Clerk of the Court using the ECF system which will send notification of such filing to counsel of record.

s/Sherri Sikorski

Sherri Sikorski

Dated: October 31, 2011