

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

WIRELESS INK CORPORATION

Plaintiff,

v.

FACEBOOK, INC.; GOOGLE, INC.,
YOUTUBE, INC.; YOUTUBE, LLC;
and MYSPACE, INC.

Defendants.

11-CV-1751 (PKC)

Jury Trial Demanded

**FACEBOOK, INC.'S ANSWER AND COUNTERCLAIMS TO
WIRELESS INK CORPORATION'S COMPLAINT**

Defendant and Counterclaimant FACEBOOK, INC. ("Facebook"), by and through the undersigned counsel, hereby submits the following Answer and Counterclaims to the Second Amended Complaint filed by Plaintiff WIRELESS INK CORPORATION ("Wireless Ink"):

NATURE OF THE ACTION

1. Facebook admits that the Complaint purports to state a claim for patent infringement. Facebook admits that the face of U.S. Patent No. 7,908,342 B2 ("the '342 patent" or "patent-in-suit") is entitled "Method, Apparatus and System for Management of Information Content for Enhanced Accessibility over Wireless Communication Networks" and states a date of issuance of March 15, 2011. Facebook denies that the '342 patent was duly and legally issued. Facebook denies that it has infringed or is infringing, that it has contributed or is contributing to the infringement of, or that it has induced or is inducing others to infringe the

'342 patent. Except as expressly admitted or denied herein, Facebook lacks sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

2. Facebook denies the allegations set forth in this paragraph to the extent they apply to Facebook. With regard to those allegations that apply to other defendants, Facebook lacks sufficient information to form a belief as to the truth of the remaining allegations recited in this paragraph, and on that basis denies them.

3. Facebook admits that the face of the '342 patent bears an application number of 12/548,928 and a publication date of February 18, 2010. Facebook admits that the face of the '342 patent lists “[c]ontinuation of application No. 10/464,526, filed on Jun. 18, 2003, now Pat. No. 7,599,983” under the heading “Related U.S. Application Data.” Facebook admits that the face of the '342 patent lists “Provisional application No. 60/389,430, filed on Jun. 18, 2002” under the heading “Related U.S. Application Data.” Facebook denies all remaining allegations contained in this paragraph to the extent they apply to Facebook. With regard to those allegations that apply to other defendants, Facebook lacks sufficient information to form a belief as to the truth of the remaining allegations recited in this paragraph, and on that basis denies them.

4. Facebook admits that a letter dated February 23, 2011 to Ted Ulyot from Jeremy S. Pitcock is attached as part of Exhibit A, and that Facebook received this letter. Facebook denies the remaining allegations of this paragraph to the extent they apply to Facebook. Except as expressly admitted or denied herein, Facebook lacks sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

5. Facebook admits that it and defendant Google Inc., are engaged in a litigation styled Wireless Ink Corp. v. Google Inc., et al., No. 10-cv-1841 (the “’983 Litigation”), in which U.S. Patent No. 7,599,983 B2 (“the ’983 patent,”) is the subject of the litigation, and that counsel for Facebook in the ’983 Litigation received the January 21, 2011 letter attached as Exhibit B. Facebook denies that the ’342 patent is patentable over the prior art disclosed by Wireless Ink to the U.S. Patent and Trademark Office. Except as expressly admitted or denied herein, Facebook lacks sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

6. Facebook denies the allegations contained in this paragraph to the extent they apply to Facebook. With regard to those allegations that apply to other defendants, Facebook lacks sufficient information to form a belief as to the truth of the remaining allegations recited in this paragraph, and on that basis denies them.

JURISDICTION AND VENUE

7. Facebook admits that this Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

8. Facebook admits that venue is proper in this district pursuant to 28 U.S.C. §§ 1391(c) and 1400(b).

9. Facebook admits that it is doing business within the United States, including within this Judicial District. Facebook denies that it has infringed or is infringing the ’342 patent. Except as expressly admitted or denied herein, Facebook lacks sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

PARTIES

10. Facebook lacks sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

11. Admitted.

12. Facebook lacks sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

13. Facebook lacks sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

14. Facebook lacks sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

15. Facebook denies the allegations contained in this paragraph to the extent they apply to Facebook. With regard to those allegations that apply to other defendants, Facebook lacks sufficient information to admit or deny the allegations contained in this paragraph and therefore denies them.

FACTUAL ALLEGATIONS

A. INFRINGEMENT BY DEFENDANTS

16. Facebook denies the allegations contained in this paragraph to the extent they apply to Facebook. With regard to those allegations that apply to other defendants, Facebook lacks sufficient information to admit or deny the allegations contained in this paragraph and therefore denies them.

I. Facebook's Alleged Direct Infringement

17. Facebook admits that it operates a website that can be found at www.facebook.com. Facebook denies all other allegations recited in this paragraph.

18. Facebook admits that it operates websites that can be found at m.facebook.com and touch.facebook.com. Facebook denies all other allegations recited in this paragraph.

19. Denied.

20. Facebook admits that users at www.facebook.com have the ability to upload certain content. Facebook denies all other allegations recited in this paragraph.

21. Facebook admits that www.facebook.com has a feature known as the "Wall." Facebook denies all other allegations recited in this paragraph.

22. Denied.

II. Google's Alleged Direct Infringement

23. Facebook lacks sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

24. Facebook lacks sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

25. Facebook lacks sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

26. Facebook lacks sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

27. Facebook lacks sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

28. Facebook lacks sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

III. YouTube's Alleged Direct Infringement

29. Facebook lacks sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

30. Facebook lacks sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

31. Facebook lacks sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

32. Facebook lacks sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

33. Facebook lacks sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

34. Facebook lacks sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

IV. MySpace's Alleged Direct Infringement

35. Facebook lacks sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

36. Facebook lacks sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

37. Facebook lacks sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

38. Facebook lacks sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

39. Facebook lacks sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

40. Facebook lacks sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

B. DEFENDANTS' ALLEGED USE OF THE PATENTED TECHNOLOGY

41. Facebook lacks sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

42. Facebook lacks sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

43. Facebook lacks sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

44. Facebook lacks sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

45. Facebook lacks sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

46. Facebook lacks sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

47. Facebook lacks sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

48. Facebook lacks sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

49. Facebook lacks sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

50. Facebook lacks sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

51. Facebook admits that Bret Taylor is the Chief Technology Officer at Facebook. Facebook admits that an article located at <http://blogs.forbes.com/oliverchiang/2011/01/25/facebook-our-focus-in-2011-is-on-mobile-html5/> quotes Bret Taylor as saying “Mobile is our primary focus for our platform this year” on January 25, 2011. Facebook admits that in November 2010, Facebook stated that it had 200 million monthly active mobile users. Facebook denies the remainder of the allegations set forth in this paragraph.

52. Denied.

53. Facebook lacks sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

54. Facebook lacks sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

C. WIRELESS INK’S ALLEGED USE OF THE PATENTED TECHNOLOGY

55. Facebook lacks sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

56. Facebook lacks sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

57. Facebook lacks sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

58. Facebook lacks sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

59. Facebook lacks sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

60. Facebook lacks sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

61. Facebook lacks sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

D. ALLEGED WILLFULNESS AND INDIRECT INFRINGEMENT

62. Facebook lacks sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

63. Facebook admits that a letter dated February 23, 2011 to Ted Ullyot from Jeremy S. Pitcock is attached as part of Exhibit A, and that Facebook received this letter. Facebook denies the remaining allegations set forth in this paragraph to the extent they apply to Facebook. Except as expressly admitted or denied herein, Facebook lacks sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

64. Facebook admits that Wireless Ink has been engaged in a patent litigation action with Facebook and Google that was filed in March of 2010. Facebook admits that its counsel in the '983 Litigation received the letter set forth in Exhibit B. Facebook denies the remaining allegations set forth in this paragraph to the extent they apply to Facebook. Except as expressly admitted or denied herein, Facebook lacks sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

65. Facebook denies all allegations that are contained in this paragraph and directed at Facebook. Facebook lacks sufficient information to form a belief as to the truth of the remaining allegations as recited in this paragraph, and on that basis denies them.

66. Facebook denies all allegations that are contained in this paragraph and directed at Facebook. Facebook lacks sufficient information to form a belief as to the truth of the remaining allegations as recited in this paragraph, and on that basis denies them.

67. Facebook denies all allegations that are contained in this paragraph and directed at Facebook. Facebook lacks sufficient information to form a belief as to the truth of the remaining allegations as recited in this paragraph, and on that basis denies them.

FIRST CLAIM FOR RELIEF
(Alleged Infringement of the '342 patent)

68. Facebook incorporates by reference paragraphs 1 through 67 of this Answer as if fully set forth herein.

69. Facebook denies all allegations that are contained in this paragraph and directed at Facebook. Facebook lacks sufficient information to form a belief as to the truth of the remaining allegations as recited in this paragraph, and on that basis denies them.

70. Facebook denies all allegations that are contained in this paragraph and directed at Facebook. Facebook lacks sufficient information to form a belief as to the truth of the remaining allegations as recited in this paragraph, and on that basis denies them.

71. Facebook denies all allegations that are contained in this paragraph and directed at Facebook. Facebook lacks sufficient information to form a belief as to the truth of the remaining allegations as recited in this paragraph, and on that basis denies them.

Wireless Ink's Prayer for Relief

Facebook incorporates by reference all preceding paragraphs of this Answer as if fully set forth herein. Facebook denies that Wireless Ink is entitled to any relief sought in Wireless Ink's Prayer for Relief against Facebook, or otherwise.

FACEBOOK, INC.'S AFFIRMATIVE DEFENSES

First Affirmative Defense: Non-Infringement

72. Facebook is not infringing and has not infringed, directly, contributorily, or by inducement any claims of the '342 patent, either literally or under the doctrine of equivalents.

Second Affirmative Defense: Invalidity

73. One or more of the claims of the '342 patent are invalid for failure to satisfy the conditions for patentability set forth in 35 U.S.C. §§ 101, 102, 103, and/or 112.

Third Affirmative Defense: Failure to State a Claim

74. The Second Amended Complaint fails to state a claim upon which relief can be granted.

Fourth Affirmative Defense: No Injunctive Relief

75. Plaintiff's demand to enjoin Facebook is barred, as Plaintiff has suffered neither harm nor irreparable harm from Facebook's actions.

Fifth Affirmative Defense: Unclean Hands

76. The claims alleged in the Second Amended Complaint are barred, in whole or in part, by the doctrine of unclean hands.

Sixth Affirmative Defense: Prosecution History Estoppel

77. Wireless Ink is estopped from construing any valid claim of the '342 patent to cover or include, either literally or by application of the doctrine of equivalents, any product or service manufactured, used, imported, sold, or offered by Facebook because of admissions and statements to the United States Patent and Trademark Office in the specification of the '342 patent and during prosecution of the application leading to the issuance of the '342 patent.

Seventh Affirmative Defense: No Willful Infringement

78. Wireless Ink is not entitled to enhanced or increased damages for willful infringement because Facebook has not engaged in any conduct that meets the applicable standard for willful infringement. Wireless Ink has also failed to adequately plead or state a claim for relief for willful infringement.

Other Affirmative Defenses

79. Facebook reserves all other affirmative defenses pursuant to Rule 8(c) of the Federal Rules of Civil Procedure, the Patent Laws of the United States, and any other defenses, at law or in equity, that now exist or in the future may be available based on discovery and further factual investigation in this case.

Relief Requested by Facebook

WHEREFORE, Facebook prays that this Court enter judgment:

- A. In favor of Facebook, and against Wireless Ink, thereby dismissing Wireless Ink's Complaint in its entirety, with prejudice, with Wireless Ink taking nothing by way of its claims;
- B. That Facebook has not infringed, contributorily infringed, or induced the infringement of, and is not now infringing, contributorily infringing, or inducing the infringement of any valid claim of U.S. Patent No. 7,908,342 B2, literally or under the doctrine of equivalents, under any subsection of 35 U.S.C. § 271;
- C. That all asserted claims of the '342 patent are invalid and/or unenforceable;
- D. That this is an exceptional case pursuant to 35 U.S.C. § 285 and ordering Wireless Ink to pay Facebook's reasonable attorneys' fees incurred in this action;
- E. That Wireless Ink pay all costs incurred by Facebook in this action; and

F. Awarding Facebook all other relief the Court deems just and proper.

JURY DEMAND

Facebook demands a trial by jury as to all issues so triable.

Date: April 25, 2011

Respectfully submitted,

COOLEY LLP

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