

UNITED STATES DISTRICT
SOUTHERN DISTRICT OF NEW YORK

_____)	
WIRELESS INK CORPORATION,)	
)	
	Plaintiff,)	
)	Case No. 11-CV-1751 (PKC)
	- against -)	
)	
FACEBOOK, INC.; GOOGLE, INC.;)	
YOUTUBE, INC.; YOUTUBE, LLC;)	
and MYSPACE, INC.)	
)	
	Defendants.)	
_____)	

ANSWER OF DEFENDANT MYSPACE, INC.

Defendant, MySpace, Inc., (“MySpace”), hereby submits its Answer to the Complaint filed in this action as follows:

NATURE OF THE ACTION

1. Defendant MySpace admits that U.S. Patent No. 7,908,342 B2 is entitled “Method, Apparatus and System for Management of Information Content for Enhanced Accessibility over Wireless Communications Networks,” and was issued on March 15, 2011. To the extent not expressly admitted herein, the allegations of Paragraph 1 of the Complaint are denied.

2. MySpace denies the allegations of Paragraph 2 of the Complaint.

3. MySpace denies the allegations of the first sentence of Paragraph 3 of the Complaint.

MySpace does not dispute that the face of the ‘342 patent indicates that it issued from U.S. Patent Application No. 12/548,928, and that application was published on February 18, 2010. MySpace further does not dispute that the face of the ‘342 patent indicates that the application that issued as the ‘342 patent was a continuation of U.S. Patent Application No. 10/464,526, filed on June 18 2003, and that application

claims priority to Provisional Application No. 60/389,430, filed on June 18, 2002. To the extent not expressly admitted herein, MySpace denies the allegations of Paragraph 3 of the Complaint.

4. To the extent that Paragraph 4 of the Complaint makes allegations with respect to Defendants other than MySpace, MySpace lacks sufficient knowledge to admit or deny them and, therefore, denies them. With respect to MySpace, MySpace admits that one of the letters attached as Exhibit A to the Complaint was addressed to the general counsel of MySpace. To the extent not expressly admitted herein, the allegations of Paragraph 4 of the Complaint are denied.

5. MySpace lacks sufficient knowledge to either admit or deny the allegations of Paragraph 5 of the Complaint and therefore denies them.

6. MySpace denies the allegations of Paragraph 6 of the Complaint.

JURISDICTION AND VENUE

7. MySpace does not dispute that this Court has jurisdiction in this matter.

8. MySpace does not dispute that venue is proper in this Court.

9. To the extent that Paragraph 9 of the Complaint makes allegations with respect to Defendants other than MySpace, MySpace lacks sufficient information to either admit or deny the allegations and therefore denies them. MySpace admits that it is doing business within the United States, including within this Judicial District. To the extent not expressly admitted herein, the allegations of Paragraph 9 of the Complaint are denied.

PARTIES

10. MySpace lacks sufficient information to either admit or deny the allegations of Paragraph 10 of the Complaint and therefore denies them.

11. MySpace lacks sufficient information to either admit or deny the allegations of Paragraph 11 of the Complaint and therefore denies them.

12. MySpace lacks sufficient information to either admit or deny the allegations of Paragraph 12 of the Complaint and therefore denies them.

13. MySpace lacks sufficient information to either admit or deny the allegations of Paragraph 13 of the Complaint and therefore denies them.

14. MySpace admits the allegations of Paragraph 14 of the Complaint.

15. MySpace denies the allegations of Paragraph 15 of the Complaint.

FACTUAL ALLEGATIONS

A. INFRINGEMENT BY DEFENDANTS

16. MySpace denies the allegations of Paragraph 16 of the Complaint.

17-34. Paragraphs 17-34 of the Complaint contain allegations relating solely to Defendants other than MySpace and, therefore, no response from MySpace is required. To the extent a response is required as to these Paragraphs of the Complaint, MySpace lacks sufficient information to either admit or deny the allegations of Paragraphs 17-34 and therefore denies them.

35. MySpace denies the allegations of Paragraph 35 of the Complaint.

36. MySpace denies the allegations of Paragraph 36 of the Complaint.

37. MySpace denies the allegations of Paragraph 37 of the Complaint.

38. MySpace denies the allegations of Paragraph 38 of the Complaint.

39. MySpace denies the allegations of Paragraph 39 of the Complaint.

40. MySpace denies the allegations of Paragraph 40 of the Complaint.

B. DEFENDANTS' USE OF THE PATENTED TECHNOLOGY

41. Paragraph 41 of the Complaint makes allegations relating to Defendants other than MySpace. MySpace lacks sufficient information to either admit or deny them and therefore denies them.

42. Paragraph 42 of the Complaint makes allegations relating to Defendants other than MySpace. MySpace lacks sufficient information to either admit or deny them and therefore denies them.

43. Paragraph 43 of the Complaint makes allegations relating to Defendants other than MySpace. MySpace lacks sufficient information to either admit or deny them and therefore denies them.

44. Paragraph 44 of the Complaint makes allegations relating to Defendants other than MySpace. MySpace lacks sufficient information to either admit or deny them and therefore denies them.

45. Paragraph 45 of the Complaint makes allegations relating to Defendants other than MySpace. MySpace lacks sufficient information to either admit or deny them and therefore denies them.

46. Paragraph 46 of the Complaint makes allegations relating to Defendants other than MySpace. MySpace lacks sufficient information to either admit or deny them and therefore denies them.

47. Paragraph 47 of the Complaint makes allegations relating to Defendants other than MySpace. MySpace lacks sufficient information to either admit or deny them and therefore denies them.

48. Paragraph 48 of the Complaint makes allegations relating to Defendants other than MySpace. MySpace lacks sufficient information to either admit or deny them and therefore denies them.

49. MySpace admits the allegations of Paragraph 49 of the Complaint.

50. MySpace admits the allegations of Paragraph 50 of the Complaint.

51. Paragraph 51 of the Complaint makes allegations relating to Defendants other than MySpace. MySpace lacks sufficient information to either admit or deny them and therefore denies them.

52. Paragraph 52 of the Complaint makes allegations relating to Defendants other than MySpace. MySpace lacks sufficient information to either admit or deny them and therefore denies them.

53. MySpace lacks sufficient information to admit or deny the allegations of Paragraph 53 of the Complaint and therefore denies them.

54. MySpace lacks sufficient information to admit or deny the allegations of Paragraph 54 of the Complaint and therefore denies them.

C. WIRELESS INK'S USE OF THE PATENTED TECHNOLOGY

55. MySpace admits the allegations of Paragraph 55 of the Complaint.

56. MySpace lacks sufficient information to admit or deny the allegations of Paragraph 56 of the Complaint and therefore denies them.

57. MySpace lacks sufficient information to admit or deny the allegations of Paragraph 57 of the Complaint and therefore denies them.

58. MySpace lacks sufficient information to admit or deny the allegations of Paragraph 58 of the Complaint and therefore denies them.

59. MySpace lacks sufficient information to admit or deny the allegations of Paragraph 59 of the Complaint and therefore denies them.

60. MySpace lacks sufficient information to admit or deny the allegations of Paragraph 60 of the Complaint and therefore denies them.

61. MySpace lacks sufficient information to admit or deny the allegations of Paragraph 61 of the Complaint and therefore denies them.

D. WILLFULNESS AND INDIRECT INFRINGEMENT

62. MySpace lacks sufficient information to admit or deny the allegations of Paragraph 62 of the Complaint and therefore denies them.

63. MySpace denies the allegations of Paragraph 63 of the Complaint.

64. MySpace lacks sufficient information to admit or deny the allegations of Paragraph 64 of the Complaint and therefore denies them.

65. To the extent Paragraph 65 makes allegations concerning Defendants other than MySpace, MySpace lacks information sufficient to either admit or deny them and therefore denies them. MySpace denies the remaining allegations of Paragraph 65 of the Complaint.

66. To the extent Paragraph 66 makes allegations concerning Defendants other than MySpace, MySpace lacks information sufficient to either admit or deny them and therefore denies them. MySpace denies the remaining allegations of Paragraph 66 of the Complaint.

67. To the extent Paragraph 67 makes allegations concerning Defendants other than MySpace, MySpace lacks information sufficient to either admit or deny them and therefore denies them. MySpace denies the remaining allegations of Paragraph 67 of the Complaint.

FIRST CLAIM FOR RELIEF

68. MySpace incorporates its responses to Paragraphs 1-67 of the Complaint as though fully set forth herein.

69. MySpace denies the allegations of Paragraph 69 of the Complaint.

70. MySpace admits that Wireless Ink's counsel sent the letter to MySpace's General Counsel that is attached at Exhibit A of the Complaint. MySpace denies the remaining allegations of Paragraph 70 of the Complaint.

71. MySpace denies the allegations of Paragraph 71 of the Complaint.

AFFIRMATIVE DEFENSES

MySpace asserts the following affirmative defenses:

1. MySpace generally denies that Wireless Ink is entitled to any of the relief requested.
2. The Complaint fails to state a claim upon which relief can be granted.
3. MySpace denies each and every allegation of the Complaint not specifically admitted herein.
4. The '342 patent is invalid pursuant to 35 U.S.C. §§ 101, 102 and/or § 103.
5. MySpace does not infringe any valid claims of the '342 patent.
6. MySpace reserves the right to raise such other and further defenses as may appear appropriate in the further course of this litigation.

WHEREFORE, MySpace prays for judgment:

- a) Dismissing Wireless Ink's complaint with prejudice;
- b) Awarding to MySpace the relief sought in its counterclaims;
- c) Awarding to MySpace its costs, attorneys' fees and expenses incurred in this action; and

d) Awarding MySpace such further necessary or proper relief as the Court deems just and appropriate.

COUNTERCLAIMS

For its counterclaims, defendant and counterclaimant MySpace, Inc. (“MySpace”) avers as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of the Counterclaims under 28 U.S.C. § 1338.

2. This Court has personal jurisdiction over Wireless Ink Corporation (“Wireless Ink”), because, *inter alia*, Wireless Ink has subjected itself to the jurisdiction of this Court by filing the present action.

3. In view of Wireless Ink’s filing of this action, venue for adjudication of these counterclaims is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400.

THE PARTIES

4. MySpace is a Delaware corporation, with a principal place of business in Beverly Hills, California.

5. On information and belief, Wireless Ink is a Delaware corporation with its principal place of business in East Islip, New York.

FACTUAL BACKGROUND

6. On information and belief, Wireless Ink is the record owner of U.S. Patent No. 7,908,342 B2 (“the ‘342 patent”), entitled “Method, Apparatus and System for Management of Information Content for Enhanced Accessibility over Wireless Communication Networks,” issued March 15, 2011.

7. On March 15, 2011, Wireless Ink filed a Complaint for Patent Infringement in this Court against MySpace. In its Complaint, Wireless Ink asserts that the ‘342 patent has been infringed by MySpace.

COUNT I
DECLARATORY JUDGMENT OF
INVALIDITY OF THE '342 PATENT

8. MySpace repeats and realleges the allegations in Paragraphs 1-7 of its Counterclaims as if set forth herein.

9. There is a substantial and continuing controversy between MySpace and Wireless Ink resulting from Wireless Ink's assertion of infringement of the '991 patent.

10. The claims of the '342 patent are invalid under one or more provisions of 35 U.S.C. §§ 101, 102 or 103.

COUNT II
DECLARATORY JUDGMENT
NON-INFRINGEMENT OF THE '342 PATENT

11. MySpace repeats and realleges the allegations in Paragraphs 1-7 of its Counterclaims as if set forth herein.

12. There is a substantial and continuing controversy between MySpace and Wireless Ink resulting from Wireless Ink's assertion of infringement of the '342 patent.

13. MySpace has not directly or indirectly infringed any valid claim of the '342 patent.

REQUEST FOR RELIEF

WHEREFORE, MySpace prays that this Court enter judgment:

- a) declaring that the claims of the '342 patent are invalid;
- b) declaring that no valid claim of the '342 patent is infringed by MySpace's products;
- c) declaring that this case is exceptional within the meaning of 35 U.S.C. § 285, and

ordering that all costs and expenses of this action, including reasonable attorneys' fees, be awarded to MySpace; and

d) awarding to MySpace such further relief as this Court may deem necessary, just and/or proper.

Dated: April 25, 2011

Respectfully submitted,

/s/ Steven M. Lieberman

Steven M. Lieberman, Esq. (Bar No. 1975531)

Sharon L. Davis, Esq.

Brian S. Rosenbloom, Esq.

ROTHWELL, FIGG, ERNST & MANBECK P.C.

1425 K St., N.W.

Suite 800

Washington, D.C. 20005

Telephone: (202) 783-6040

Facsimile: (202) 783-6031

*Attorneys for Defendant and Counterclaimant,
MySpace, Inc.*

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