

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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WIRELESS INK CORP.,	:
	:
Plaintiff,	:
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	:
-against-	:
	:
FACEBOOK, INC.; GOOGLE, INC.;	:
YOUTUBE, INC.; YOUTUBE, LLC.;	:
MYSPACE, INC.,	:
	:
Defendants.	:
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**DEFENDANT GOOGLE INC.'S ANSWER  
TO PLAINTIFF WIRELESS INK CORPORATION'S  
COMPLAINT FOR PATENT INFRINGEMENT**

Defendant Google Inc. (“Google”) responds to the Complaint for Patent Infringement (“Complaint”) of Plaintiff Wireless Ink Corporation (“Plaintiff” or “Wireless Ink”) as follows:

Google believes that no response to the preamble of the Complaint is required, but to the extent any response is required, and to the extent the allegations contained in the preamble are directed at Google, Google denies the allegations contained in the preamble. To the extent the allegations contained in the preamble are directed at any other defendant, Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the preamble of the Complaint and on that basis denies the allegations contained therein.

**NATURE OF THE ACTION**

1. Google admits that the U.S. Patent No. 7,908,342 B2 (the “’342 patent”) is entitled, on its face, “Method, Apparatus and System for Management of Information Content for Enhanced Accessibility over Wireless Communication Networks.” Google specifically denies that the ’342 patent was duly and legally issued. Further, Google is without knowledge or

information sufficient to form a belief as to the truth of the allegation that “Wireless Ink is the owner of all right, title and interest in and to” the ’342 patent and on that basis denies the allegation. Except as expressly admitted herein, Google denies the remaining allegations contained in paragraph 1 of the Complaint.

2. To the extent they are directed at Google, Google denies the allegations contained in paragraph 2 of the Complaint. Google specifically denies any infringement and/or inducement of infringement of the ’342 patent by Google or YouTube, LLC (“YouTube”). To the extent the allegations contained in paragraph 2 of the Complaint are directed at any other defendant, Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Complaint and on that basis denies the allegations contained therein.

3. Google admits U.S. Patent Application No. 12/548,928 was published on February 18, 2010, U.S. Patent No. 10/464,526 was filed on June 18, 2003, and Provisional Application No. 60/389,430 was filed on June 18, 2002. To the extent the allegations contained in paragraph 3 of the Complaint are directed at any other defendant, Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the Complaint and on that basis denies the allegations contained therein. Except as expressly admitted herein, Google denies the remaining allegations contained in paragraph 3 of the Complaint.

4. Google admits receiving the letter attached in Exhibit A addressed to it from the Plaintiff on or about February 23, 2011. Google also admits that YouTube received the letter attached in Exhibit A addressed to it from the Plaintiff on or about February 23, 2011. To the extent the allegations in paragraph 4 of the Complaint purport to refer to letters, Google refers to

the letters for their content. To the extent the allegations contained in paragraph 4 of the Complaint are directed at any other defendant, Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the Complaint and on that basis denies the allegations contained therein. Except as expressly admitted herein, Google denies the remaining allegations contained in paragraph 4 of the Complaint.

5. Google admits that U.S. Patent No. 7,599,983 B2 (the “983 patent”) is the subject of current litigation between Google and Plaintiff. Google admits receiving the letter to the Court attached in Exhibit B on or about January 21, 2011. To the extent the allegations in paragraph 5 of the Complaint purport to refer to a letter to Google, Google refers to that letter for its content. To the extent the allegations contained in paragraph 5 of the Complaint are directed at Facebook, Inc. (“Facebook”), Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the Complaint and on that basis denies the allegations contained therein. Except as expressly admitted herein, Google denies the remaining allegations contained in paragraph 5 of the Complaint.

6. To the extent the allegations contained in paragraph 6 of the Complaint are directed at Google, Google denies the allegations in paragraph 6. Google specifically denies any infringement of the ’342 patent by Google or YouTube and that any alleged infringement was or is willful, and/or purposeful and/or deliberate. Google further specifically denies that Wireless Ink is entitled to any damages. To the extent the allegations contained in paragraph 6 of the Complaint are directed at any other defendant, Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the Complaint and on that basis denies the allegations contained therein.

## **JURISDICTION AND VENUE**

7. Google admits that Wireless Ink's Complaint purports to state a claim for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. § 101, *et seq.*, and that, pursuant to 28 U.S.C. §§ 1331 and 1338(a), this Court has subject matter jurisdiction over actions arising under the Patent Laws of the United States. Except as expressly admitted herein, Google denies the remaining allegations contained in paragraph 7 of the Complaint.

8. For purposes of this action only, Google does not contest that venue is proper as to Google and YouTube. To the extent the allegations contained in paragraph 8 of the Complaint are directed at any other defendant, Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the Complaint and on that basis denies the allegations contained therein. Except as expressly admitted herein, Google denies the remaining allegations contained in paragraph 8 of the Complaint.

9. Google admits that Google and YouTube do business within the United States, including within this Judicial District. Google specifically denies any acts of infringement of the '342 patent by Google or YouTube. To the extent the allegations contained in paragraph 9 of the Complaint are directed at any other defendant, Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of the Complaint and on that basis denies the allegations contained therein. Except as expressly admitted herein, Google denies the remaining allegations contained in paragraph 9 of the Complaint.

## **PARTIES**

10. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of the Complaint and on that basis denies the allegations contained therein.

11. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the Complaint and on that basis denies the allegations contained therein.

12. Google admits that it is a Delaware Corporation with its principal place of business in Mountain View, California.

13. Google denies that YouTube, Inc. is a Delaware Corporation, with its principal place of business in San Bruno California. YouTube, Inc. no longer exists as a corporate entity. Google further denies that YouTube, LLC is a Delaware Corporation, but admits that its principal place of business is in San Bruno, California. Except as expressly admitted herein, Google denies the remaining allegations contained in paragraph 13 of the Complaint.

14. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the Complaint and on that basis denies the allegations contained therein.

15. To the extent they are directed at Google, Google denies the allegations contained in paragraph 15 of the Complaint. Google specifically denies that Google or YouTube has committed any acts defined as unlawful under 35 U.S.C. § 271 and § 154(d). To the extent the allegations contained in paragraph 15 of the Complaint are directed at any other defendant, Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15 of the Complaint and on that basis denies the allegations contained therein.

## **FACTUAL ALLEGATIONS**

16. To the extent they are directed at Google, Google denies the allegations contained in paragraph 16 of the Complaint. Google specifically denies any infringement of the '342 patent by Google or YouTube. To the extent the allegations contained in paragraph 16 of the Complaint are directed at any other defendant, Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 of the Complaint and on that basis denies the allegations contained therein.

17. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of the Complaint and on that basis denies the allegations contained therein.

18. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18 of the Complaint and on that basis denies the allegations contained therein.

19. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19 of the Complaint and on that basis denies the allegations contained therein.

20. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 of the Complaint and on that basis denies the allegations contained therein.

21. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 of the Complaint and on that basis denies the allegations contained therein.

22. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 of the Complaint and on that basis denies the allegations contained therein.

23. To the extent the allegations in paragraph 23 are conclusions of law or legal argument, they do not require a response, but to the extent a response is required Google denies the allegations and Google specifically denies any infringement. Google admits that it operates www.google.com. Except as expressly admitted herein, Google denies the remaining allegations contained in paragraph 23 of the Complaint.

24. To the extent the allegations in paragraph 24 are conclusions of law or legal argument, they do not require a response, but to the extent a response is required Google denies the allegations and Google specifically denies any infringement. Google admits that it operates www.m.google.com and www.google.com/reader/m. Except as expressly admitted herein, Google denies the remaining allegations contained in paragraph 24 of the Complaint.

25. To the extent the allegations in paragraph 25 are conclusions of law or legal argument, they do not require a response, but to the extent a response is required Google denies the allegations and Google specifically denies any infringement. Google admits that it operates mail.google.com and www.google.com/reader. Except as expressly admitted herein, Google denies the remaining allegations contained in paragraph 25 of the Complaint.

26. To the extent the allegations in paragraph 26 are conclusions of law or legal argument, they do not require a response, but to the extent a response is required Google denies the allegations and Google specifically denies any infringement. Google denies the remaining allegations contained in paragraph 26 of the Complaint.

27. To the extent the allegations in paragraph 27 are conclusions of law or legal argument, they do not require a response, but to the extent a response is required Google denies the allegations and Google specifically denies any infringement. Google denies the remaining allegations contained in paragraph 27 of the Complaint.

28. To the extent the allegations in paragraph 28 are conclusions of law or legal argument, they do not require a response, but to the extent a response is required Google denies the allegations and Google specifically denies any infringement.

29. To the extent the allegations in paragraph 29 are conclusions of law or legal argument, they do not require a response, but to the extent a response is required Google denies the allegations and Google specifically denies any infringement by YouTube. Google admits that YouTube operates [www.youtube.com](http://www.youtube.com). Except as expressly admitted herein, Google denies the remaining allegations contained in paragraph 29 of the Complaint.

30. To the extent the allegations in paragraph 30 are conclusions of law or legal argument, they do not require a response, but to the extent a response is required Google denies the allegations and Google specifically denies any infringement by YouTube. Google admits that YouTube operates [m.youtube.com](http://m.youtube.com). Except as expressly admitted herein, Google denies the remaining allegations contained in paragraph 30 of the Complaint.

31. To the extent the allegations in paragraph 31 are conclusions of law or legal argument, they do not require a response, but to the extent a response is required Google denies the allegations and Google specifically denies any infringement by YouTube. Google denies the remaining allegations contained in paragraph 31 of the Complaint.

32. To the extent the allegations in paragraph 32 are conclusions of law or legal argument, they do not require a response, but to the extent a response is required Google denies

the allegations and Google specifically denies any infringement by YouTube. Google denies the remaining allegations contained in paragraph 32 of the Complaint.

33. To the extent the allegations in paragraph 33 are conclusions of law or legal argument, they do not require a response, but to the extent a response is required Google denies the allegations and Google specifically denies any infringement by YouTube. Google denies the remaining allegations contained in paragraph 33 of the Complaint.

34. To the extent the allegations in paragraph 34 are conclusions of law or legal argument, they do not require a response, but to the extent a response is required Google denies the allegations and Google specifically denies any infringement by YouTube.

35. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 35 of the Complaint and on that basis denies the allegations contained therein.

36. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 36 of the Complaint and on that basis denies the allegations contained therein.

37. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 37 of the Complaint and on that basis denies the allegations contained therein.

38. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 38 of the Complaint and on that basis denies the allegations contained therein.

39. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 39 of the Complaint and on that basis denies the allegations contained therein.

40. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 40 of the Complaint and on that basis denies the allegations contained therein.

41. To the extent that the allegations in paragraph 41 purport to quote Google CEO Eric Schmidt, Google refers to the quotes for their content, and denies that the allegations in paragraph 41 are full and accurate quotes. The remaining allegations set forth in paragraph 41 of the Complaint are immaterial or impertinent and do not require a response. To the extent a response is required for the remaining allegations set forth in paragraph 41 of the Complaint, and except as expressly admitted herein, Google denies those allegations. Except as expressly admitted herein, Google denies the remaining allegations contained in paragraph 41 of the Complaint.

42. The allegations set forth in paragraph 42 of the Complaint are immaterial or impertinent and do not require a response. To the extent a response is required for the allegations set forth in paragraph 42 of the Complaint, and except as expressly admitted herein, Google denies those allegations. To the extent that the allegations in paragraph 42 purport to quote Karim Temsamani, Google refers to the quote for its content, and denies that the allegations in paragraph 42 are a full and accurate quote. To the extent the allegations in paragraph 42 of the Complaint purport to quote an article or website, Google refers to that article or website for its content.

43. The allegations set forth in paragraph 43 of the Complaint are immaterial or impertinent and do not require a response. To the extent a response is required for the allegations set forth in paragraph 43 of the Complaint, Google denies those allegations.

44. The allegations set forth in paragraph 44 of the Complaint are immaterial or impertinent and do not require a response. To the extent the allegations of paragraph 44 concern entities other than Google, Google is without knowledge or information sufficient to form a belief as to the truth of those allegations and on that basis denies them. Google admits that it purchased AdMob for \$750 million in stock. Except as expressly admitted herein, Google denies the remaining allegations contained in paragraph 44 of the Complaint.

45. The allegations set forth in paragraph 45 of the Complaint are immaterial or impertinent and do not require a response. To the extent a response is required for the allegations set forth in paragraph 45 of the Complaint, and except as expressly admitted herein, Google denies those allegations. To the extent that the allegations in paragraph 45 purport to quote Karim Temsamani, Google refers to the quote for its content, and denies that the allegations in paragraph 45 are a full and accurate quote.

46. The allegations set forth in paragraph 46 of the Complaint are immaterial or impertinent and do not require a response. To the extent a response is required for the allegations set forth in paragraph 46 of the Complaint, Google admits that it owns YouTube and that YouTube operates m.youtube.com. Google also admits that advertisements appear on m.youtube.com in certain instances. Except as expressly admitted herein, Google denies the allegations contained in paragraph 46 of the Complaint.

47. The allegations set forth in paragraph 47 of the Complaint are immaterial or impertinent and do not require a response. To the extent a response is required for the

allegations set forth in paragraph 47 of the Complaint, and except as expressly admitted herein, Google denies those allegations. To the extent that the allegations in paragraph 47 purport to quote Taylor Cascino, Google refers to the quote for its content, and denies that the allegations in paragraph 47 are a full and accurate quote.

48. The allegations set forth in paragraph 48 of the Complaint are immaterial or impertinent and do not require a response. To the extent a response is required for the allegations set forth in paragraph 48 of the Complaint, and except as expressly admitted herein, Google denies those allegations. To the extent that the allegations in paragraph 48 purport to quote Shishir Mehrotra, Google refers to the quote for its content, and denies that the allegations in paragraph 48 are a full and accurate quote.

49. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 49 of the Complaint and on that basis denies the allegations contained therein.

50. To the extent the allegations contained in paragraph 50 of the Complaint are directed at MySpace, Inc. (“MySpace”), Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 50 of the Complaint and on that basis denies the allegations contained therein. Google admits that Google and MySpace entered into an agreement in 2010. Except as expressly admitted herein, Google denies the allegations contained in paragraph 50 of the Complaint.

51. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 51 of the Complaint and on that basis denies the allegations contained therein.

52. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 52 of the Complaint and on that basis denies the allegations contained therein.

53. The allegations set forth in paragraph 53 of the Complaint are immaterial or impertinent and do not require a response and except as expressly admitted herein, Google denies the allegations contained in paragraph 53 of the Complaint. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 53 of the Complaint and on that basis denies the allegations contained therein. To the extent the allegations in paragraph 53 of the Complaint purport to quote articles or websites, Google refers to those articles or websites for their content.

54. The allegations set forth in paragraph 54 of the Complaint are immaterial or impertinent and do not require a response and except as expressly admitted herein, Google denies the allegations contained in paragraph 54 of the Complaint. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 54 of the Complaint and on that basis denies the allegations contained therein.

55. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 55 of the Complaint and on that basis denies the allegations contained therein. Google specifically denies that the '983 patent was duly and legally issued.

56. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 56 of the Complaint and on that basis denies the allegations contained therein. To the extent the allegations in paragraph 56 of the Complaint purport to quote an article or website, Google refers to that article or website for its content.

57. Google admits that it purchased AdMob. Google is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 57 of the Complaint and on that basis denies those allegations.

58. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 58 of the Complaint and on that basis denies the allegations contained therein. To the extent the allegations in paragraph 58 of the Complaint purport to quote articles or websites, Google refers to those articles or websites for their content.

59. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 59 of the Complaint and on that basis denies the allegations contained therein. To the extent the allegations in paragraph 59 of the Complaint purport to quote articles or websites, Google refers to those articles or websites for their content.

60. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 60 of the Complaint and on that basis denies the allegations contained therein.

61. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 61 of the Complaint and on that basis denies the allegations contained therein. To the extent the allegations in paragraph 61 of the Complaint purport to quote an article or website, Google refers to that article or website for its content.

62. Google is without sufficient knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 62 of the Complaint and on that basis denies the allegations contained therein.

63. To the extent the allegations of paragraph 63 are directed to any defendant other than Google and YouTube, Google is without sufficient knowledge or information sufficient to form a

belief as to the truth of those allegations and on that basis denies them. Google denies the allegations contained in paragraph 63 that are directed to either Google or YouTube. Except as expressly admitted herein, Google denies the allegations contained in paragraph 63 of the Complaint.

64. To the extent the allegations of paragraph 64 are directed to Facebook, Google is without sufficient knowledge or information sufficient to form a belief as to the truth of those allegations and on that basis denies them. Google admits that Google and the Plaintiff are currently in a patent litigation regarding the '983 patent. Except as expressly admitted herein, Google denies the remaining allegations contained in paragraph 64 of the complaint.

65. To the extent the allegations contained in paragraph 65 of the Complaint are directed at Google, Google denies the allegations contained in paragraph 65 of the Complaint, and Google specifically denies any infringement of the '342 patent by Google or YouTube and further denies that Wireless Ink possesses any valid and lawful patent rights. Google is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 65 of the Complaint and on that basis denies those allegations.

66. To the extent the allegations contained in paragraph 66 of the Complaint are directed at Google, Google denies the allegations contained in paragraph 66 of the Complaint, and Google specifically denies any infringement of the '342 patent by Google or YouTube, any indifference by Google or YouTube to a known patent risk, that any alleged infringement was willful and that plaintiff is entitled to any damages. Google is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 66 of the Complaint and on that basis denies those allegations.

67. To the extent the allegations contained in paragraph 67 of the Complaint are directed at Google, Google denies those allegations. Google specifically denies any inducement of infringement of the '342 patent by Google or YouTube. Google is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 67 of the Complaint and on that basis denies those allegations.

**FIRST CLAIM FOR RELIEF**  
**(Infringement of the '342 Patent)**

68. Google repeats and incorporates by reference its responses as set forth in paragraphs 1-67 above.

69. To the extent the allegations in paragraph 69 purport to recite what "Wireless Ink alleges," Google is without knowledge or information sufficient to form a belief as to what Wireless Ink believes or alleges and on that basis denies the allegations contained therein. Google specifically denies that it or YouTube is infringing or has infringed any claim of the '342 patent literally or under the doctrine of equivalents, has actively induced infringement by others or committed any other act defined in 35 U.S.C. § 271 as unlawful. To the extent the allegations contained in paragraph 69 of the Complaint are directed at any other defendant, Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 69 of the Complaint and on that basis denies the allegations contained therein. To the extent a response is required from Google for the remaining allegations set forth in paragraph 69 of the Complaint, Google denies those allegations.

70. To the extent the allegations contained in paragraph 70 of the Complaint are directed at any other defendant, Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 70 of the Complaint and on that basis denies the allegations contained therein. To the extent the allegations of paragraph 70 are directed at

Google, Google denies those allegations, and specifically denies that the plaintiff is entitled to any damages.

71. To the extent the allegations contained in paragraph 71 of the Complaint are directed at any other defendant, Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 71 of the Complaint and on that basis denies the allegations contained therein. To the extent the allegations of paragraph 71 are directed at Google, Google denies those allegations, and specifically denies any direct or inducement of infringement of the '342 patent by Google or YouTube, that any alleged infringement was willful, and that Wireless Ink possesses any valid and lawful rights in the '342 patent.

\* \* \*

Google denies that Wireless Ink is entitled to the relief sought in items A through I on page 18 of the Complaint.

### **AFFIRMATIVE DEFENSES**

In addition to the defenses described below, Google reserves all affirmative defenses under 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, which may now exist or in the future may be available based on discovery and further factual investigation in this case.

#### **FIRST AFFIRMATIVE DEFENSE**

72. Google has not infringed and is not infringing any claim of the '342 patent, either directly or by inducing or contributing to infringement by others.

### SECOND AFFIRMATIVE DEFENSE

73. Each of the claims of the '342 patent is invalid, unenforceable, and/or void for failing to comply with one or more of the requirements for patentability under the Patent Laws of the United States, including but not limited to, 35 U.S.C. §§ 101, 102, 103, 112 *et seq.*

### THIRD AFFIRMATIVE DEFENSE

74. 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 Google 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.

### FOURTH AFFIRMATIVE DEFENSE

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

### FIFTH AFFIRMATIVE DEFENSE

76. Wireless Ink is not entitled to enhanced or increased damages for willful infringement because Google 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.

### SIXTH AFFIRMATIVE DEFENSE

77. Wireless Ink is not entitled to injunctive relief because any alleged injury to Wireless Ink is not immediate or irreparable, and Wireless Ink has an adequate remedy at law.

### SEVENTH AFFIRMATIVE DEFENSE

78. With respect to each purported claim for relief alleged in the Complaint, Wireless Ink fails to state a claim against Google upon which relief may be granted, including but not limited to any claim for infringement, contributory infringement, inducing infringement or willful infringement.

### EIGHTH AFFIRMATIVE DEFENSE

79. Wireless Ink failed to provide adequate notice to Google of alleged infringement and is thus barred under 35 U.S.C. § 287 from recovering damages prior to the date of the filing of the Complaint.

80. Wireless Ink is barred by 35 U.S.C. § 288 from recovering costs associated with its action.

81. By asserting this affirmative defense, Google does not assume any burden of proof.

### NINTH AFFIRMATIVE DEFENSE

82. Wireless Ink cannot prove that this is an exceptional case justifying award of attorney fees against Google pursuant to 35 U.S.C. § 285.

### TENTH AFFIRMATIVE DEFENSE

83. To the extent Wireless Ink purports to identify a Google product, Wireless Ink's claims for contributory infringement are barred in whole or in part under 35 U.S.C. § 271(c) in view of the substantial non-infringing uses of such allegedly infringing product.

### ELEVENTH AFFIRMATIVE DEFENSE

84. Google's investigation of its defenses is continuing, and Google expressly reserves the right to allege and assert any additional affirmative defenses under Rule 8 of the

Federal Rules of Civil Procedure, the patent laws of the United States and any other defense, at law or in equity, that may now exist or in the future be available based upon discovery and further investigation in this case. Google also expressly incorporates by reference herein all defenses pleaded by any other defendant in this action in its respective answer to the Complaint.

**JURY DEMAND**

Google requests a trial by jury as to all issues so triable.

**PRAYER FOR RELIEF**

WHEREFORE, Defendant Google respectfully requests that the Court enter an Order and Judgment:

- A. Dismissing Wireless Ink's claims against Google with prejudice;
- B. Denying all relief sought by Wireless Ink;
- C. That Google has not infringed and is not directly or indirectly infringing any claim of the '342 patent, literally or under the doctrine of equivalents, under any subsection of 35 U.S.C. § 271;
- D. That all asserted claims of the '342 patent are invalid and/or unenforceable;
- E. That this case is exceptional under 35 U.S.C. § 285 and awarding to Google its costs, attorneys' fees, and expenses incurred in defending against Wireless Ink's Complaint; and
- F. Awarding Google such other and further relief as the Court deems just and proper.

Dated: New York, New York

WHITE & CASE LLP

April 25, 2011

By: /s/ Kevin X. McGann

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