

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

MINERVA INDUSTRIES, INC.,

Plaintiff,

v.

MOTOROLA, INC. *et al.*,

Defendants.

CIVIL ACTION NO. 2:07-CV-0229 TJW

SONY ERICSSON'S ANSWER TO COMPLAINT

Defendant Sony Ericsson Mobile Communications (USA) Inc. ("Sony Ericsson") (incorrectly sued as "Sony Ericsson Communications (USA), Inc.") files this Answer to Plaintiff's Complaint and Demand for Jury Trial ("Complaint") and alleges:

PARTIES

1. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 1 of the Complaint and therefore denies the allegations in that paragraph.

2. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 2 of the Complaint and therefore denies the allegations in that paragraph.

3. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 3 of the Complaint and therefore denies the allegations in that paragraph.

4. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 4 of the Complaint and therefore denies the allegations in that paragraph.

5. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 5 of the Complaint and therefore denies the allegations in that paragraph.

6. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 6 of the Complaint and therefore denies the allegations in that paragraph.

7. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 7 of the Complaint and therefore denies the allegations in that paragraph.

8. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 8 of the Complaint and therefore denies the allegations in that paragraph.

9. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 9 of the Complaint and therefore denies the allegations in that paragraph.

10. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 10 of the Complaint and therefore denies the allegations in that paragraph.

11. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 11 of the Complaint and therefore denies the allegations in that paragraph.

12. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 12 of the Complaint and therefore denies the allegations in that paragraph.

13. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 13 of the Complaint and therefore denies the allegations in that paragraph.

14. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 14 of the Complaint and therefore denies the allegations in that paragraph.

15. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 15 of the Complaint and therefore denies the allegations in that paragraph.

16. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 16 of the Complaint and therefore denies the allegations in that paragraph.

17. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 17 of the Complaint and therefore denies the allegations in that paragraph.

18. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 18 of the Complaint and therefore denies the allegations in that paragraph.

19. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 19 of the Complaint and therefore denies the allegations in that paragraph.

20. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 20 of the Complaint and therefore denies the allegations in that paragraph.

21. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 21 of the Complaint and therefore denies the allegations in that paragraph.

22. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 22 of the Complaint and therefore denies the allegations in that paragraph.

23. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 23 of the Complaint and therefore denies the allegations in that paragraph.

24. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 24 of the Complaint and therefore denies the allegations in that paragraph.

25. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 25 of the Complaint and therefore denies the allegations in that paragraph.

26. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 26 of the Complaint and therefore denies the allegations in that paragraph.

27. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 27 of the Complaint and therefore denies the allegations in that paragraph.

28. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 28 of the Complaint and therefore denies the allegations in that paragraph.

29. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 29 of the Complaint and therefore denies the allegations in that paragraph.

30. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 30 of the Complaint and therefore denies the allegations in that paragraph.

31. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 31 of the Complaint and therefore denies the allegations in that paragraph.

32. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 32 of the Complaint and therefore denies the allegations in that paragraph.

33. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 33 of the Complaint and therefore denies the allegations in that paragraph.

34. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 34 of the Complaint and therefore denies the allegations in that paragraph.

35. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 35 of the Complaint and therefore denies the allegations in that paragraph.

36. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 36 of the Complaint and therefore denies the allegations in that paragraph.

37. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 37 of the Complaint and therefore denies the allegations in that paragraph.

38. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 38 of the Complaint and therefore denies the allegations in that paragraph.

39. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 39 of the Complaint and therefore denies the allegations in that paragraph.

40. Sony Ericsson admits the allegations in paragraph 40 of the Complaint.

41. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 41 of the Complaint and therefore denies the allegations in that paragraph.

42. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 42 of the Complaint and therefore denies the allegations in that paragraph.

43. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 43 of the Complaint and therefore denies the allegations in that paragraph.

44. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 44 of the Complaint and therefore denies the allegations in that paragraph.

JURISDICTION AND VENUE

45. Responding to the allegations in paragraph 45 of the Complaint, Sony Ericsson admits that this action purports to arise under the patent laws of the United States and that the Court has subject-matter jurisdiction.

46. Sony Ericsson denies the allegations in paragraph 46 of the Complaint as to Sony Ericsson and is without sufficient information to form a belief as to the truth of the allegations in

paragraph 46 as to other defendants, and therefore, denies those other allegations. Sony Ericsson is not asserting that venue is improper in this action.

47. Sony Ericsson denies the allegations in paragraph 47 of the Complaint as to Sony Ericsson and is without sufficient information to form a belief as to the truth of the allegations in paragraph 47 as to other defendants, and therefore, denies those other allegations. Sony Ericsson is not challenging that it is subject to personal jurisdiction in this action.

COUNT I

48. Responding to the allegations in paragraph 48 of the Complaint, Sony Ericsson admits that U.S. Patent No. 6,681,120 (“the ’120 patent”) was issued by the U.S. Patent & Trademark Office on January 20, 2004, that it is entitled “Mobile Entertainment and Communication Device,” and that a copy of the ’120 patent appeared to be attached as Exhibit A to the Complaint. Sony Ericsson is without sufficient information to form a belief as to the truth of the remaining allegations in paragraph 48 of the Complaint and therefore denies those remaining allegations.

49. Responding to the allegations in paragraph 49 of the Complaint, Sony Ericsson admits that the face of the ’120 patent states: “Inventor: Ki Il Kim, Los Angeles, CA (US).”

50. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 50 of the Complaint, and therefore, denies the allegation in that paragraph.

51. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 51 of the Complaint and therefore denies the allegations in that paragraph.

52. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 52 of the Complaint and therefore denies the allegations in that paragraph.

53. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 53 of the Complaint and therefore denies the allegations in that paragraph.

54. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 54 of the Complaint and therefore denies the allegations in that paragraph.

55. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 55 of the Complaint and therefore denies the allegations in that paragraph.

56. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 56 of the Complaint and therefore denies the allegations in that paragraph.

57. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 57 of the Complaint and therefore denies the allegations in that paragraph.

58. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 58 of the Complaint and therefore denies the allegations in that paragraph.

59. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 59 of the Complaint and therefore denies the allegations in that paragraph.

60. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 60 of the Complaint and therefore denies the allegations in that paragraph.

61. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 61 of the Complaint and therefore denies the allegations in that paragraph.

62. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 62 of the Complaint and therefore denies the allegations in that paragraph.

63. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 63 of the Complaint and therefore denies the allegations in that paragraph.

64. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 64 of the Complaint and therefore denies the allegations in that paragraph.

65. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 65 of the Complaint and therefore denies the allegations in that paragraph.

66. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 66 of the Complaint and therefore denies the allegations in that paragraph.

67. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 67 of the Complaint and therefore denies the allegations in that paragraph.

68. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 68 of the Complaint and therefore denies the allegations in that paragraph.

69. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 69 of the Complaint and therefore denies the allegations in that paragraph.

70. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 70 of the Complaint and therefore denies the allegations in that paragraph.

71. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 71 of the Complaint and therefore denies the allegations in that paragraph.

72. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 72 of the Complaint and therefore denies the allegations in that paragraph.

73. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 73 of the Complaint and therefore denies the allegations in that paragraph.

74. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 74 of the Complaint and therefore denies the allegations in that paragraph.

75. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 75 of the Complaint and therefore denies the allegations in that paragraph.

76. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 76 of the Complaint and therefore denies the allegations in that paragraph.

77. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 77 of the Complaint and therefore denies the allegations in that paragraph.

78. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 78 of the Complaint and therefore denies the allegations in that paragraph.

79. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 79 of the Complaint and therefore denies the allegations in that paragraph.

80. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 80 of the Complaint and therefore denies the allegations in that paragraph.

81. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 81 of the Complaint and therefore denies the allegations in that paragraph.

82. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 82 of the Complaint and therefore denies the allegations in that paragraph.

83. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 83 of the Complaint and therefore denies the allegations in that paragraph.

84. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 84 of the Complaint and therefore denies the allegations in that paragraph.

85. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 85 of the Complaint and therefore denies the allegations in that paragraph.

86. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 86 of the Complaint and therefore denies the allegations in that paragraph.

87. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 87 of the Complaint and therefore denies the allegations in that paragraph.

88. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 88 of the Complaint and therefore denies the allegations in that paragraph.

89. Sony Ericsson denies the allegations in paragraph 89 of the Complaint.

90. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 90 of the Complaint and therefore denies the allegations in that paragraph.

91. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 91 of the Complaint and therefore denies the allegations in that paragraph.

92. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 92 of the Complaint and therefore denies the allegations in that paragraph.

93. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 93 of the Complaint and therefore denies the allegations in that paragraph.

94. Sony Ericsson denies the allegations in paragraph 94 of the Complaint as to Sony Ericsson. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 94 as to other defendants, and therefore, denies the remaining allegations in that paragraph.

95. Sony Ericsson denies the allegations in paragraph 95 of the Complaint as to Sony Ericsson. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 95 as to other defendants, and therefore, denies the remaining allegations in that paragraph.

96. Sony Ericsson denies the allegations in paragraph 96 of the Complaint as to Sony Ericsson. Sony Ericsson is without sufficient information to form a belief as to the truth of the allegations in paragraph 96 as to other defendants, and therefore, denies the remaining allegations in that paragraph.

97. Sony Ericsson denies that Plaintiff is entitled to any relief requested in the “Prayer for Relief” in the Complaint.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

98. Sony Ericsson has not infringed any valid claim of the '120 patent. Nor has Sony Ericsson actively induced infringement of or contributorily infringed any valid claim of the '120 patent.

SECOND DEFENSE

99. The '120 patent is partially or wholly invalid for failure to meet the requirements of 35 U.S.C. §§ 1 *et seq.*, including, but not limited to, 35 U.S.C. §§ 102, 103, and/or 112.

THIRD DEFENSE

100. Plaintiff is estopped from construing any valid claim of the '120 patent to cover or include, either literally or by application of the doctrine of equivalents, any product manufactured, used, imported, sold, or offered by Sony Ericsson because of admissions and

statements to the United States Patent and Trademark Office in the specification of the '120 patent and during prosecution of the application leading to the issuance of the '120 patent.

FOURTH DEFENSE

101. Plaintiff is not entitled to injunctive relief because any alleged injury to the Plaintiff is not immediate or irreparable, and Plaintiff has an adequate remedy at law.

FIFTH DEFENSE

102. Plaintiff's claims are barred by the doctrine of prosecution laches.

SONY ERICSSON'S COUNTERCLAIMS

1. Sony Ericsson Mobile Communications (USA) Inc. ("Sony Ericsson") is a corporation organized and existing under the laws of the State of Delaware having its principal place of business at 7001 Development Drive, Research Triangle Park, North Carolina 27709.

2. On information and belief, Minerva Industries, Inc. ("Minerva") is a California corporation with a place of business at 255 S. Grand Avenue, Suite 2004, Los Angeles, California 90012.

3. This Court has subject-matter jurisdiction over these counterclaims under 28 U.S.C. §§ 1331, 1338, 2201, and 2202, as they arise under an act of Congress relating to patents, 35 U.S.C. §§ 101 et seq. Venue is proper in the Eastern District of Texas under 28 U.S.C. § 1391(b), (c).

FIRST COUNTERCLAIM

4. Sony Ericsson repeats and incorporates by reference the allegations contained in paragraphs 1–3 above as if fully set forth herein.

5. U.S. Patent No. 6,681,120 (“the ’120 patent”) was issued on January 20, 2004, by the United States Patent & Trademark Office. Minerva claims to own all rights and interest in the ’120 patent.

6. Minerva has asserted that Sony Ericsson infringes the ’120 patent. An actual controversy exists between Minerva and Sony Ericsson over the alleged infringement of the ’120 patent.

7. Sony Ericsson is entitled to judgment from this Court that it has not and does not directly or indirectly infringe, contribute to, or induce infringement of any valid, enforceable claim of the ’120 patent either literally or under the doctrine of equivalents.

8. This is an exceptional case entitling Sony Ericsson to an award of its attorneys’ fees incurred in connection with this action under 35 U.S.C. § 285.

SECOND COUNTERCLAIM

9. Sony Ericsson repeats and incorporates by reference the allegations contained in paragraphs 1–8 above as if fully set forth herein.

10. An actual controversy exists between Minerva and Sony Ericsson over the validity of the ’120 patent.

11. Sony Ericsson is entitled to judgment from this Court that the ’120 patent is invalid for failing to meet one or more conditions of patentability set forth in Part II of Title 35 of the United States Code, including but not limited to sections 102, 103, and/or 112.

12. This is an exceptional case entitling Sony Ericsson to an award of its attorneys’ fees incurred in connection with this action under 35 U.S.C. § 285.

PRAYER FOR RELIEF

FOR THESE REASONS, Sony Ericsson Mobile Communications (USA) Inc. respectfully requests that this Court enter judgment its favor and grant the following relief:

- a. An order declaring that Minerva, its officers, directors, agents, servants, employees, and attorneys, and those persons in active concert or participation with it, take nothing on the claims asserted in the Complaint;
- b. A declaration that Sony Ericsson does not infringe the '120 patent;
- c. A declaration that the '120 patent is invalid;
- d. An order declaring that this is an exceptional case and awarding Sony Ericsson its costs, expenses, and reasonable attorneys' fees under 35 U.S.C. § 285 and all other applicable statutes, rules, and common law; and
- e. Any such other relief as the Court may deem appropriate and just under the circumstances.

Respectfully submitted,

/s/ Richard L. Wynne, Jr.

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ATTORNEYS FOR DEFENDANT

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(USA) INC.

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically on the 15th day of November, 2007, in compliance with Local Rule CV-5(a) and has been served on all counsel who have consented to electronic service and all other counsel by facsimile and regular mail.

/s/ Richard L. Wynne, Jr.

Richard L. Wynne, Jr.

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