

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

MINERVA INDUSTRIES, INC.,

Plaintiff,

vs.

MOTOROLA, INC., ET AL.,

Defendants.

Civil Action No. 2:07-CV-229 TJW

JURY TRIAL DEMANDED

DEFENDANT HTC AMERICA INC.'S CORPORATE ORIGINAL ANSWER

TO THE HONORABLE UNITED STATES DISTRICT COURT:

NOW COMES, HTC America, Inc. (“HTC America”), by and through its attorneys, answers the Complaint of Minerva Industries, Inc. (“Minerva”) as follows:

1. HTC America is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 and thus denies the allegations in that paragraph.
2. HTC America is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2 and thus denies the allegations in that paragraph.
3. HTC America is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3 and thus denies the allegations in that paragraph.
4. HTC America is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4 and thus denies the allegations in that paragraph.

5. HTC America is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5 and thus denies the allegations in that paragraph.

6. HTC America is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6 and thus denies the allegations in that paragraph.

7. HTC America is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7 and thus denies the allegations in that paragraph.

8. HTC America is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8 and thus denies the allegations in that paragraph.

9. HTC America is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 9 and thus denies the allegations in that paragraph.

10. HTC America is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10 and thus denies the allegations in that paragraph.

11. HTC America is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11 and thus denies the allegations in that paragraph.

12. HTC America is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12 and thus denies the allegations in that paragraph.

13. HTC America is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13 and thus denies the allegations in that paragraph.

14. HTC America is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 14 and thus denies the allegations in that paragraph.

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17. HTC America is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 17 and thus denies the allegations in that paragraph.

18. HTC America is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 18 and thus denies the allegations in that paragraph.

19. HTC America is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 19 and thus denies the allegations in that paragraph.

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24. HTC America is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 24 and thus denies the allegations in that paragraph.

25. HTC America is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 25 and thus denies the allegations in that paragraph.

26. HTC America is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 26 and thus denies the allegations in that paragraph.

27. HTC America is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 27 and thus denies the allegations in that paragraph.

28. HTC America is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 28 and thus denies the allegations in that paragraph.

29. HTC America is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 29 and thus denies the allegations in that paragraph.

30. HTC America denies the allegations in paragraph 30.

31. HTC America denies the allegations in paragraph 31.

32. HTC America is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 32 and thus denies the allegations in that paragraph.

33. HTC America is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 33 and thus denies the allegations in that paragraph.

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41. HTC America is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 41 and thus denies the allegations in that paragraph.

42. HTC America is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 42 and thus denies the allegations in that paragraph.

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JURISDICTION AND VENUE

45. HTC America admits that this action purports to arise under the patent laws of the United States and that the Court has subject-matter jurisdiction.

46. HTC America denies the allegations contained in paragraph 46.

47. HTC America denies the allegations contained in paragraph 47.

COUNT I

INFRINGEMENT OF U.S. PATENT NO. 6,681,120

48. HTC America admits that a copy of the '120 patent appears to be attached to the Complaint as Exhibit A. HTC America is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 48 and thus denies the allegations

in that paragraph.

49. HTC America admits that the face of the '120 patent lists Ki Il Kim as inventor.

50. HTC America is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 50 and thus denies the allegations in that paragraph.

51. HTC America is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 51 and thus denies the allegations in that paragraph.

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58. HTC America is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 58 and thus denies the allegations in that paragraph.

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60. HTC America is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 60 and thus denies the allegations in that paragraph.

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70. HTC America is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 70 and thus denies the allegations in that paragraph.

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75. HTC America is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 75 and thus denies the allegations in that paragraph.

76. HTC America is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 76 and thus denies the allegations in that paragraph.

77. HTC America is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 77 and thus denies the allegations in that paragraph.

78. HTC America is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 78 and thus denies the allegations in that paragraph.

79. HTC America denies the allegations contained in paragraph 79.

80. HTC America denies the allegations contained in paragraph 80.

81. HTC America is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 81 and thus denies the allegations in that paragraph.

82. HTC America is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 82 and thus denies the allegations in that paragraph.

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92. HTC America is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 92 and thus denies the allegations in that paragraph.

93. HTC America is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 93 and thus denies the allegations in that paragraph.

94. HTC America denies the allegations contained in paragraph 94 as to HTC Corporation and/or HTC America. HTC America is without knowledge or information sufficient to form a belief as to the truth of the other allegations and thus denies such other allegations in that paragraph.

95. HTC America denies the allegations contained in paragraph 95 as to HTC Corporation and/or HTC America. HTC America is without knowledge or information sufficient to form a belief as to the truth of the other allegations and thus denies such other allegations in that paragraph.

96. HTC America denies the allegations contained in paragraph 96 as to HTC Corporation and/or HTC America. HTC America is without knowledge or information sufficient to form a belief as to the truth of the other allegations and thus denies such other allegations in that paragraph.

97. HTC America denies the allegations contained in paragraph 97 as to HTC Corporation and/or HTC America. HTC America is without knowledge or information sufficient to form a belief as to the truth of the other allegations and thus denies such other allegations in that paragraph.

PLAINTIFF'S PRAYER FOR RELIEF

HTC America denies that Minerva is entitled to the relief requested in its Prayer for Relief whatsoever, including without limitation paragraphs 1 – 6 of the Complaint.

AFFIRMATIVE DEFENSES

In addition to the defenses described below, HTC America 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

Neither HTC America nor any of its customers nor suppliers directly infringe, either literally or under the doctrine of equivalents, or induce or contribute to the infringement of any valid claim of the '120 patent.

Second Affirmative Defense

The claims of the '120 patent are partially or wholly invalid because they fail to comply with the conditions and requirements for patentability set forth in 35 U.S.C. § 1 et seq., including but not limited to 35 U.S.C. §§ 102, 103, and/or 112.

Third Affirmative Defense

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 HTC America 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 Affirmative Defense

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 Affirmative Defense

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

Sixth Affirmative Defense

On information and belief, some or all of Plaintiff's claims for relief concerning the '120 patent are limited by failure to comply with the marking and notice requirements of 35 U.S.C. § 287(a).

Seventh Affirmative Defense

As to some or all of Plaintiff's claims concerning the '120 patent, Plaintiff's recovery for alleged infringement, if any, is limited to any alleged infringement committed no more than six years prior to the filing of its counterclaim, pursuant to 35 U.S.C. § 286.

Eighth Affirmative Defense

Plaintiff is not entitled to enhanced or increased damages for willful infringement, because HTC America has not engaged in any conduct that meets the applicable standard for willful infringement.

WHEREFORE, HTC America prays that Minerva take nothing against it, that the suit against HTC America be dismissed because the HTC America that has answered hereby is not the HTC America that is identified in the Complaint.

Dated: January 7, 2008

Respectfully submitted,

WHITE & CASE LLP

By: s/ Warren S. Heit_____

Warren S. Heit (Admitted Pro Hac Vice)

California State Bar No. 164658

Kyle D. Chen (Admitted Pro Hac Vice)

California State Bar No. 239501

White & Case LLP

3000 El Camino Real

Five Palo Alto Square, Ninth Floor

Palo Alto, California 94306

Telephone: (650) 213-0300

Facsimile: (650) 213-8158

ATTORNEYS FOR DEFENDANT

HTC America, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this motion was served on all counsel who have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Fed. R. Civ. P. 5(d) and Local Rule CV-5(e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by certified mail, return receipt requested, on this 7th day of January, 2008.

_____ s/ Warren S. Heit _____