

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

FUNCTION MEDIA, L.L.C.	§	
	§	
Plaintiff,	§	Civil Action No. 2-007-CV-279
	§	
vs.	§	
	§	Honorable John T. Ward
GOOGLE, INC. AND YAHOO!, INC.	§	
	§	
Defendants.	§	JURY TRIAL DEMANDED

PLAINTIFF’S ANSWER TO YAHOO’S COUNTERCLAIMS FOR DECLARATORY JUDGMENT

Plaintiff Function Media, L.L.C. (“Function Media”), by and through its attorneys of record, hereby answers the counterclaims of Defendant Yahoo!, Inc. (“Yahoo”).

Jurisdiction and Venue

- 44. The paragraph draws legal conclusions to which no response is necessary. The balance is denied.
- 45. Plaintiff lacks knowledge or information sufficient to form a belief about the truth of this paragraph.
- 46. Admitted.
- 47. The paragraph draws legal conclusions to which no response is necessary. The balance is denied.
- 48. Admitted.

Count I – U.S. Patent No. 6,446,045

- 49. This paragraph draws legal conclusions to which no response is necessary and draws on material to which no response is required. The balance is denied. If a

response is necessary, plaintiff denies each and every affirmative defense asserted by defendant.

50. Plaintiff admits that it has brought suit to enforce the '045 patent, the '025 patent, and the '059 patent against defendant. The balance is denied.

51. Denied.

52. Denied.

53. Denied.

54. The paragraph draws legal conclusions to which no response is necessary. The balance of the paragraph is denied.

Count II – U.S. Patent No. 7,240,025

55. This paragraph draws legal conclusions to which no response is necessary and draws on material to which no response is required. The balance is denied. If a response is necessary, plaintiff denies each and every affirmative defense asserted by defendant.

56. Denied.

57. Denied.

58. Denied. Specifically, plaintiff denies the following allegations made in paragraphs 39-41:

39. Denied.

40. Denied.

41. Denied. Specifically,

a. Plaintiff admits that during the prosecution of the '587 patent, the Mason patent was cited by the USPTO. The balance is denied.

- b. Plaintiff admits that Kenneth S. Roberts was an attorney retained by the inventors of the '025 patent, and that Mr. Roberts submitted a declaration in the application that became the '025 patent and described correspondence with one of the inventors of the Mason patent, in which Mr. Roberts was informed that the priority date for the Mason patent could not have been before October, 1999.
- c. Plaintiff admits that Attorneys Croskell and Roberts owed duties common to counsel practicing before the PTO.
- d. Denied.
- e. Denied.
- f. Denied.
- g. Denied.

59. Denied.

60. The paragraph draws legal conclusions to which no response is necessary. The balance of the paragraph is denied.

Count 3 – U.S. Patent No. 7,249,059

61. This paragraph draws legal conclusions to which no response is necessary and draws on material to which no response is required. The balance is denied. If a response is necessary, plaintiff denies each and every affirmative defense asserted by defendant.

62. Denied.

63. Denied.

64. Denied. Specifically, plaintiff denies the following allegations made in paragraphs 39-43:

39. Denied.

40. Denied.

41. Denied. Specifically,

a. Plaintiff admits that during the prosecution of the '587 patent, the Mason patent was cited by the USPTO. The balance is denied.

b. Plaintiff admits that Kenneth S. Roberts was an attorney retained by the inventors of the '025 patent, and that Mr. Roberts submitted a declaration in the application that became the '025 patent and described correspondence with one of the inventors of the Mason patent, in which Mr. Roberts was informed that the priority date for the Mason patent could not have been before October, 1999.

c. Plaintiff admits that Attorneys Croskell and Roberts owed duties common to counsel practicing before the PTO.

d. Denied.

e. Denied.

f. Denied.

g. Denied.

42. Denied.

43. Denied. Specifically,

a. Plaintiff reasserts and incorporates by reference its denials of paragraphs 40-41 above, and otherwise denies this paragraph.

- b. Plaintiff admits that the '059 patent is a CIP of an earlier application, and otherwise denies this paragraph.
 - c. Plaintiff admits that the '059 patent contained new matter describing third party professionals.
 - d. Denied.
 - e. Denied.
 - f. Denied.
 - g. Denied.
65. Denied.
66. This paragraph draws legal conclusions to which no response is necessary and draws on material to which no response is required. The balance is denied.
67. This paragraph draws legal conclusions to which no response is necessary and draws on material to which no response is required. The balance is denied.

PRAYER FOR RELIEF

Wherefore, Function Media respectfully asks the Court for the following relief:

- (a) a declaration that Yahoo's accused products infringe U.S. Patent Nos. 66,446,045, 7,240,025, and 7,249,059;
- (b) a declaration that U.S. Patent Nos. 66,446,045, 7,240,025, and 7,249,059 are valid and enforceable;
- (c) dismissal of Yahoo's counterclaims with prejudice;
- (d) an award of attorneys' fees and costs; and
- (e) such other relief as the Court may deem just and equitable.

DATED: October 15, 2007

Respectfully submitted,

By: /s/ S. Calvin Capshaw

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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served this 15th day of October, 2007, with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served via electronic mail, facsimile transmission and/or first class mail on the same date.

/s/ S. Calvin Capshaw
S. Calvin Capshaw