



Defendants Google Inc. (“Google”), and Android, Inc. (“Android”), in response to the allegations of the Complaint, allege as follows:

### **THE PARTIES**

1. Regarding the allegations of paragraph 1, Google and Android are without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, deny them.

2. Regarding the allegations of paragraph 2, Google and Android are without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, deny them.

3. Regarding the allegations of paragraph 3, Google and Android are without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, deny them.

4. Regarding the allegations of paragraph 4, Google and Android are without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, deny them.

5. Regarding the allegations of paragraph 5, Google and Android are without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, deny them.

6. Regarding the allegations of paragraph 6, Google and Android are without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, deny them.

7. Regarding the allegations of paragraph 7, Google and Android are without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, deny them.

8. Regarding the allegations of paragraph 8, Google and Android are without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, deny them.

9. Regarding the allegations of paragraph 9, Google and Android are without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, deny them.

10. Regarding the allegations of paragraph 10, Google and Android are without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, deny them.

11. Regarding the allegations of paragraph 11, Google and Android are without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, deny them.

12. Regarding the allegations of paragraph 12, Google and Android are without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, deny them.

13. Regarding the allegations of paragraph 13, Google and Android are without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, deny them.

14. Regarding the allegations of paragraph 14, Google and Android are without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, deny them.

15. Regarding the allegations of paragraph 15, Google and Android are without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, deny them.

16. Regarding the allegations of paragraph 16, Google and Android are without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, deny them.

17. Regarding the allegations of paragraph 17, Google and Android are without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, deny them.

18. Regarding the allegations of paragraph 18, Google and Android admit the allegations.

19. Regarding the allegations of paragraph 19, Google and Android admit the allegations.

20. Regarding the allegations of paragraph 20, Google and Android are without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, deny them.

21. Regarding the allegations of paragraph 21, Google and Android are without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, deny them.

22. Regarding the allegations of paragraph 22, Google and Android are without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, deny them.

23. Regarding the allegations of paragraph 23, Google and Android are without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, deny them.

24. Regarding the allegations of paragraph 24, Google and Android are without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, deny them.

25. Regarding the allegations of paragraph 25, Google and Android are without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, deny them.

### **JURISDICTION AND VENUE**

26. Regarding the allegations of paragraph 26, Google and Android admit that API purports to bring this action under Title 35 of the United States Code, but denies the claim is meritorious. Google admits that, for the purposes of this action only, this Court has subject matter jurisdiction over this case under 28 U.S.C. §§ 1331 and 1338(a).

27. To the extent the allegations of paragraph 27 are directed to entities other than Google or Android, Google and Android are without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, deny them. To the extent the allegations of paragraph 27 are directed to Google or Android, Google and Android, without admitting that it is necessary proper or convenient and for the purposes of this action only, do not

contest venue. Google and Android deny that they have committed and/or induced any acts of patent infringement.

28. To the extent the allegations of paragraph 28 are directed to entities other than Google or Android, Google and Android are without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, deny them. To the extent the allegations of paragraph 28 are directed to Google or Android, Google and Android do not contest the exercise of personal jurisdiction over them by the Court in this matter. Google and Android deny that they have committed any acts of infringement and otherwise deny the remaining allegations of paragraph 28.

**COUNT I**  
**INFRINGEMENT OF U.S. PATENT NO. 6,859,699**

29. Regarding the allegations of paragraph 29, Google and Android admit that United States Patent No. 6,859,699 (the ‘699 Patent’) is entitled “Network-Based Method and System for Distributing Data,” and that the face of the patent bears an issue date of February 22, 2005. Google and Android also admit that Exhibit A to the Complaint appears to be a copy of the ‘699 patent. Google and Android are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 29, and, on that basis, deny them.

30. Regarding the allegations of paragraph 30, Google and Android admit the allegations.

31. Regarding the allegations of paragraph 31, Google and Android are without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, deny them.

32. Regarding the allegations of paragraph 32, Google and Android are without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, deny them.

33. Regarding the allegations of paragraph 33, Google and Android are without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, deny them.

34. Regarding the allegations of paragraph 34, Google and Android are without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, deny them.

35. Regarding the allegations of paragraph 35, Google and Android are without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, deny them.

36. Regarding the allegations of paragraph 35, Google and Android are without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, deny them.

37. Regarding the allegations of paragraph 37, Google and Android are without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, deny them.

38. Regarding the allegations of paragraph 38, Google and Android are without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, deny them.

39. Regarding the allegations of paragraph 39, Google and Android are without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, deny them.

40. Regarding the allegations of paragraph 40, Google and Android are without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, deny them.

41. Regarding the allegations of paragraph 41, Google and Android are without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, deny them.

42. Regarding the allegations of paragraph 42, Google and Android are without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, deny them.

43. Regarding the allegations of paragraph 43, Google and Android are without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, deny them.

44. Regarding the allegations of paragraph 44, Google and Android are without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, deny them.

45. Regarding the allegations of paragraph 45, Google and Android are without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, deny them.

46. Regarding the allegations of paragraph 46, Google and Android are without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, deny them.

47. Regarding the allegations of paragraph 47, the allegations are denied.

48. Regarding the allegations of paragraph 48, the allegations are denied.

49. Regarding the allegations of paragraph 49, Google and Android are without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, deny them.

50. Regarding the allegations of paragraph 50, Google and Android are without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, deny them.

51. Regarding the allegations of paragraph 51, Google and Android are without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, deny them.

52. Regarding the allegations of paragraph 52, Google and Android are without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, deny them.

53. Regarding the allegations of paragraph 53, Google and Android are without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, deny them.

54. Regarding the allegations of paragraph 54, Google and Android are without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, deny them.

55. Regarding the allegations of paragraph 55, Google and Android are without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, deny them.

56. Paragraph 56 contains no allegations, and therefore no response is required. To the extent the paragraph alleges that discovery will establish that Google or Android have engaged in willful infringement, the allegations are denied.

57. To the extent the allegations of paragraph 57 relate to other defendants, Google and Android are without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, deny them. To the extent the allegations are directed to Google or Android, the allegations are denied.

58. To the extent the allegations of paragraph 58 relate to other defendants, Google and Android are without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, deny them. To the extent the allegations are directed to Google or Android, the allegations are denied.

59. All allegations not specifically addressed above are denied.

### **AFFIRMATIVE DEFENSES**

Google and Android assert the following Affirmative Defenses in response to Plaintiff's Complaint. Google and Android reserve the right to amend their Answer to add additional Affirmative Defenses, including instances of inequitable conduct, as they become known throughout the course of discovery in this case. Assertion of a defense is not a concession that Google or Android has the burden of proving the matter asserted.

1. The '699 patent is invalid for failure to comply with the United States patent laws, including 35 U.S.C. §§ 101, 102, 103, and/or 112.

2. Neither Google nor Android have infringed, either directly or indirectly, either literally or under the doctrine of equivalents, any claim of the '699 patent.

3. On information and belief, discovery will establish that plaintiff's claims are barred, in whole or part, by the doctrine of laches, waiver, estoppel and/or unclean hands.

4. Plaintiff's claims are barred by the doctrine of prosecution history estoppel and/or the doctrine of prosecution history disclaimer based on statements, representations, and admissions made during the prosecution of the patent application resulting in the '699 patent before the United States Patent and Trademark Office.

5. Plaintiff is not entitled to injunctive relief because it has not suffered any irreparable harm and has an adequate remedy of law.

6. Plaintiff's claims that Google and Android indirectly infringe the '699 patent, either contributorily or by inducement, are barred, in whole or in part, because Google and Android are not liable to Plaintiff for the allegedly infringing act for any time periods during which Google and Android did not know of the '699 patent and/or did not have the specific intent to cause infringement of the '699 patent and/or otherwise did not know that its alleged actions would constitute indirect infringement.

7. Plaintiff's claims for relief are statutorily limited in whole or in part by Title 35 of the United States Code, including, without limitation, 35 U.S.C. §§ 286 and/or 287.

8. Google and Android reserve all other defenses under Rule 8(a) of the Federal Rules of Civil Procedure and any other defenses, at law or in equity, which may now exist or in the future be available based on discovery and further factual investigation in this case.

## **COUNTERCLAIMS**

In further response to the Complaint, defendants and counterclaim plaintiffs Google and Android, for their counterclaims against counterclaim defendant API, allege as follows:

### **THE PARTIES**

1. Google is a Delaware corporation with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, California 94043.
2. Android is a Delaware corporation with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, California 94043.
3. API alleges in its Complaint that it is a Texas limited liability company with its principal place of business at 207C N. Washington Street, Marshall, Texas.
4. In its Complaint for Patent Infringement, API alleges that it is the owner by assignment of the '699 Patent and holds all rights and interests in the patent.
5. Under 28 U.S.C. § 1338(a), this Court has subject matter jurisdiction over these counterclaims for declaratory judgment, brought pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. Venue for these counterclaims is proper under 28 U.S.C. §§ 1391(b) and (c) and 1400(b).
6. This Court has personal jurisdiction over API because API has commenced the underlying patent infringement action in this Court.
7. Based on the Complaint for Patent Infringement API filed against Google and Android, an actual and justiciable controversy exists between Google and Android, on one side, and API, on the other, with respect to the alleged infringement and validity of the '699 Patent.

**FIRST COUNTERCLAIM**  
**(Declaratory Judgment of Noninfringement)**

8. Google and Android reallege and incorporate by reference the allegations contained in paragraphs 1-7 above.

9. API alleges that Google and Android have both infringed its patent rights, including the '699 patent.

10. Neither Google nor Android have infringed or currently infringe any patent rights owned by API, including any claims of the '699 patent.

11. Google and Android are entitled to a declaration that they have not infringed any patent rights owned by API, including any claims of the '699 patent and that they are not currently infringing (directly, contributorily, or by inducement), any such rights or claims.

**SECOND COUNTERCLAIM**  
**(Declaratory Judgment of Invalidity)**

12. Google and Android reallege and incorporate by reference the allegations in paragraphs 1-11 above.

13. API alleges that Google and Android have both infringed valid claims of the '699 patent.

14. Neither Google nor Android have infringed or currently infringe any valid claim of the '699 patent. In addition, the claims of the '699 patent are invalid for failure to comply with the requirements of the United States patent laws, including 35 U.S.C. §§ 101, 102, 103, and/or 112.

15. Google and Android are entitled to a declaration that the claims of the '699 Patent are invalid.

## **JURY DEMAND**

Google and Android respectfully demand a trial by jury of any and all issues triable of right by jury in this action.

## **PRAYER FOR RELIEF**

WHEREFORE, Google and Android respectfully request that this Court enter judgment and grant relief as follows:

- A. That the Court dismiss API's Complaint with prejudice;
- B. That the Court declare that API take nothing by its Complaint;
- C. That the Court issue a declaratory judgment that neither Google nor Android infringe and have not infringed, either directly or indirectly, literally or under the doctrine of equivalents, any patent rights owned by API, including any claim of the '699 patent;
- D. That the Court issue a declaratory judgment that the '699 patent is invalid;
- E. That the Court enjoin plaintiff, including its officers, directors, attorneys, agents and anyone acting in concert with such persons from asserting that Google or Android, or any of Google or Android's customers, distributors, or agents, have infringed the '699 patent;
- F. That the Court deny API's request for injunctive relief;
- G. That the Court find that this case is exceptional, and require plaintiff to pay Google and Android's attorneys' fees and costs pursuant to 35 U.S.C. § 285 or as otherwise permitted by law; and
- H. That the court award Google and Android such other and further relief as the Court may deem appropriate and just under the circumstances.

Dated: August 21, 2009

Respectfully submitted,

*s/ Michael E. Jones*

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ATTORNEYS FOR DEFENDANTS  
Google Inc. and Android, Inc.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on August 21, 2009. Any other counsel of record will be served by First Class U.S. mail on this same date.

*/s/ Michael E. Jones* \_\_\_\_\_  
Michael E. Jones