

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

API TECHNOLOGIES, LLC

Plaintiff,

v.

Civil Action No. 2:09-cv-00147-TJW

- (1) FACEBOOK, INC.;
- (2) AMAZON.COM, INC.;
- (3) AMAZON WEB SERVICES LLC;
- (4) AOL LLC;
- (5) MAPQUEST, INC.;
- (6) BEBO, INC.;
- (7) TRUVEO, INC.;
- (8) BEST BUY CO. INC.;
- (9) CBS CORPORATION;
- (10) CBS INTERACTIVE INC.;
- (11) CBS INTERACTIVE MEDIA INC.;
- (12) CNET INVESTMENTS, INC.;
- (13) CNET NETWORKS, INC.;
- (14) LAST.FM LIMITED;
- (15) THE DUN & BRADSTREET CORPORATION;
- (16) HOOVER'S, INC.;
- (17) GOOGLE INC.;
- (18) ANDROID, INC.;
- (19) THOMSON REUTERS CORPORATION;
- (20) THOMSON REUTERS PLC;
- (21) THOMSON REUTERS U.S. INC.;
- (22) THOMSON REUTERS U.S.A. INC.;
- (23) REUTERS AMERICA, LLC; and
- (24) YAHOO! INC.,

JURY TRIAL DEMANDED

Defendants.

**DEFENDANT BEST BUY CO., INC'S ANSWER AND AFFIRMATIVE DEFENSES
TO ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT**

Best Buy Co. Inc ("Best Buy"), erroneously sued in place of Best Buy.com, LLC, answers API Technologies, LLC's ("Plaintiff") Original Complaint ("Complaint") as follows:

GENERAL DENIAL

Best Buy denies each and every allegation, matter or thing contained in the Complaint which is not expressly admitted, qualified, or answered herein.

PARTIES

1. Best Buy is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1, and therefore denies them.

2. The allegations of paragraph 2 are not directed to Best Buy, and therefore no answer is required. Best Buy is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2, and therefore denies them.

3. The allegations of paragraph 3 are not directed to Best Buy, and therefore no answer is required. Best Buy is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3, and therefore denies them.

4. The allegations of paragraph 4 are not directed to Best Buy, and therefore no answer is required. Best Buy is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4, and therefore denies them.

5. The allegations of paragraph 5 are not directed to Best Buy, and therefore no answer is required. Best Buy is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5, and therefore denies them.

6. The allegations of paragraph 6 are not directed to Best Buy, and therefore no answer is required. Best Buy is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6, and therefore denies them.

7. The allegations of paragraph 7 are not directed to Best Buy, and therefore no answer is required. Best Buy is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7, and therefore denies them.

8. The allegations of paragraph 8 are not directed to Best Buy, and therefore no answer is required. Best Buy is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8, and therefore denies them.

9. Best Buy admits the allegations of paragraph 9.

10. The allegations of paragraph 10 are not directed to Best Buy, and therefore no answer is required. Best Buy is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 10, and therefore denies them.

11. The allegations of paragraph 11 are not directed to Best Buy, and therefore no answer is required. Best Buy is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 11, and therefore denies them.

12. The allegations of paragraph 12 are not directed to Best Buy, and therefore no answer is required. Best Buy is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12, and therefore denies them.

13. The allegations of paragraph 13 are not directed to Best Buy, and therefore no answer is required. Best Buy is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 13, and therefore denies them.

14. The allegations of paragraph 14 are not directed to Best Buy, and therefore no answer is required. Best Buy is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 14, and therefore denies them.

15. The allegations of paragraph 15 are not directed to Best Buy, and therefore no answer is required. Best Buy is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 15, and therefore denies them.

16. The allegations of paragraph 16 are not directed to Best Buy, and therefore no answer is required. Best Buy is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 16, and therefore denies them.

17. The allegations of paragraph 17 are not directed to Best Buy, and therefore no answer is required. Best Buy is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 17, and therefore denies them.

18. The allegations of paragraph 18 are not directed to Best Buy, and therefore no answer is required. Best Buy is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 18, and therefore denies them.

19. The allegations of paragraph 19 are not directed to Best Buy, and therefore no answer is required. Best Buy is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 19, and therefore denies them.

20. The allegations of paragraph 20 are not directed to Best Buy, and therefore no answer is required. Best Buy is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 20, and therefore denies them.

21. The allegations of paragraph 21 are not directed to Best Buy, and therefore no answer is required. Best Buy is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 21, and therefore denies them.

22. The allegations of paragraph 22 are not directed to Best Buy, and therefore no answer is required. Best Buy is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 22, and therefore denies them.

23. The allegations of paragraph 23 are not directed to Best Buy, and therefore no answer is required. Best Buy is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 23, and therefore denies them.

24. The allegations of paragraph 24 are not directed to Best Buy, and therefore no answer is required. Best Buy is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 24, and therefore denies them.

25. The allegations of paragraph 25 are not directed to Best Buy, and therefore no answer is required. Best Buy is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 25, and therefore denies them.

JURISDICTION AND VENUE

26. The allegations of paragraph 26 set forth legal conclusions to which no answer is required. Best Buy admits that the Complaint alleges infringement under the United States patent laws. Best Buy admits that this Court has subject matter jurisdiction over patent law claims generally, but denies that this Court has subject matter jurisdiction in this case.

27. To the extent the allegations of paragraph 27 are directed to Best Buy, they are denied. To the extent the allegations of paragraph 27 are directed to other entities, Best Buy is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 27, and therefore denies them.

28. To the extent the allegations of paragraph 28 are directed to Best Buy, they are denied. To the extent the allegations of paragraph 28 are directed to other entities, Best Buy is

without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 28, and therefore denies them.

COUNT I

INFRINGEMENT OF U.S. PATENT NO. 6,859,699

29. Best Buy admits that United States Patent No. 6,859,699 (the ‘699 Patent’) is entitled “Network-Based Method and System for Distributing Data,” and that the patent bears an issuance date of February 22, 2005. Best Buy also admits that a purported copy of the ‘699 patent is attached as Exhibit A to the Complaint. Best Buy lacks sufficient information to admit or deny whether Plaintiff is the owner by assignment of the ‘699 patent, and therefore denies the allegation.

30. Best Buy admits the allegations of paragraph 30.

31. The allegations of paragraph 31 are not directed to Best Buy, and therefore no answer is required. Best Buy is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 31, and therefore denies them.

32. The allegations of paragraph 32 are not directed to Best Buy, and therefore no answer is required. Best Buy is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 32, and therefore denies them.

33. The allegations of paragraph 33 are not directed to Best Buy, and therefore no answer is required. Best Buy is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 33, and therefore denies them.

34. The allegations of paragraph 34 are not directed to Best Buy, and therefore no answer is required. Best Buy is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 34, and therefore denies them.

35. The allegations of paragraph 35 are not directed to Best Buy, and therefore no answer is required. Best Buy is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 35, and therefore denies them.

36. The allegations of paragraph 36 are not directed to Best Buy, and therefore no answer is required. Best Buy is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 36, and therefore denies them.

37. The allegations of paragraph 37 are not directed to Best Buy, and therefore no answer is required. Best Buy is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 37, and therefore denies them.

38. Best Buy denies the allegations of paragraph 38.

39. The allegations of paragraph 39 are not directed to Best Buy, and therefore no answer is required. Best Buy is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 39, and therefore denies them.

40. The allegations of paragraph 40 are not directed to Best Buy, and therefore no answer is required. Best Buy is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 40, and therefore denies them.

41. The allegations of paragraph 41 are not directed to Best Buy, and therefore no answer is required. Best Buy is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 41, and therefore denies them.

42. The allegations of paragraph 42 are not directed to Best Buy, and therefore no answer is required. Best Buy is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 42, and therefore denies them.

43. The allegations of paragraph 43 are not directed to Best Buy, and therefore no answer is required. Best Buy is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 43, and therefore denies them.

44. The allegations of paragraph 44 are not directed to Best Buy, and therefore no answer is required. Best Buy is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 44, and therefore denies them.

45. The allegations of paragraph 45 are not directed to Best Buy, and therefore no answer is required. Best Buy is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 45, and therefore denies them.

46. The allegations of paragraph 46 are not directed to Best Buy, and therefore no answer is required. Best Buy is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 46, and therefore denies them.

47. The allegations of paragraph 47 are not directed to Best Buy, and therefore no answer is required. Best Buy is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 47, and therefore denies them.

48. The allegations of paragraph 48 are not directed to Best Buy, and therefore no answer is required. Best Buy is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 48, and therefore denies them.

49. The allegations of paragraph 49 are not directed to Best Buy, and therefore no answer is required. Best Buy is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 49, and therefore denies them.

50. The allegations of paragraph 50 are not directed to Best Buy, and therefore no answer is required. Best Buy is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 50, and therefore denies them.

51. The allegations of paragraph 51 are not directed to Best Buy, and therefore no answer is required. Best Buy is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 51, and therefore denies them.

52. The allegations of paragraph 52 are not directed to Best Buy, and therefore no answer is required. Best Buy is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 52, and therefore denies them.

53. The allegations of paragraph 53 are not directed to Best Buy, and therefore no answer is required. Best Buy is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 53, and therefore denies them.

54. The allegations of paragraph 54 are not directed to Best Buy, and therefore no answer is required. Best Buy is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 54, and therefore denies them.

55. Best Buy is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 55, and therefore denies them.

56. The allegations of paragraph 56 set forth legal rights reserved by the Plaintiff, and therefore no answer is required. Best Buy denies the allegations of willful infringement implicit in paragraph 56.

57. Best Buy denies the allegations of paragraph 57.

58. Best Buy denies the allegations of paragraph 58.

PRAYER FOR RELIEF

These paragraphs, numbered 1-6, set forth the statement of relief requested by Plaintiff to which no response is required. Best Buy denies that Plaintiff is entitled to any of the requested relief and denies any allegations.

DEMAND FOR JURY TRIAL

This paragraph sets forth Plaintiff's request for a jury trial to which no response is required.

AFFIRMATIVE DEFENSES

Subject to the responses above, Best Buy alleges and asserts the following defenses in response to the allegations, undertaking the burden of proof only as to those defenses deemed affirmative defenses by law, regardless of how such defenses are denominated herein. In addition to the affirmative defenses described below, Best Buy specifically reserves all rights to allege additional affirmative defenses that become known through the course of discovery.

1. Best Buy does not infringe and has not infringed (not directly, indirectly, contributorily, and/or by inducement) literally or under the doctrine of equivalents any valid claim of the '699 patent.

2. The '699 patent is invalid for, among other things, failure to meet the requirements of patentability found in 35 U.S.C. §§ 102, 103, and/or 112 because, among other things, the alleged invention is taught by, suggested by, anticipated by, and/or is obvious in view of the prior art and the claims fail to particularly point out and distinctly claim the subject matter of the invention.

3. This Court lacks personal jurisdiction over Best Buy.

4. To the extent that Best Buy has infringed any claim of the '699 patent, which is denied, such infringement was innocent and not willful.

5. The claims of the '699 patent are unenforceable as asserted, in whole or in part, by the doctrine of laches.

COUNTERCLAIMS

Defendant/Counterclaimant Best Buy, for its separate counterclaim against Plaintiff/Counterclaim Defendant API Technologies, LLC ("API"), and upon information and belief states and alleges as follows:

1. This is an action for a declaratory judgment, together with such further relief based thereon as may be necessary or proper, pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. There is an actual controversy between Best Buy and API arising under the United States patent laws, Title 35 of the United States Code.

2. Subject matter jurisdiction of this Court is founded on Title 28, United States Code §§ 1331, 1338(a), 2201, and 2202. Venue within this judicial district is proper under Title 28, United States Code §§ 1391(b) or (c).

3. Best Buy is a Minnesota corporation organized and existing under the laws of the State of Minnesota with its principal place of business in Minnesota.

4. API alleges that it is a Texas limited liability company with a principal place of business at 207C N Washington Street, Marshall, TX.

FIRST COUNTERCLAIM

(Declaratory Judgment of Non-Infringement of U.S. Patent No. 6,859,699)

5. Best Buy restates and realleges each of the allegations set forth in Counterclaim paragraphs 1 through 4 above.

6. API alleges that it is the owner by assignment of United States Patent No. 6,859,699 (“the ’699 patent”), and that Best Buy has infringed the ’699 patent, subjecting Best Buy to liability under the patent laws.

7. Best Buy denies these allegations. Best Buy has not infringed and does not infringe, directly, indirectly, contributorily, or by inducement, any valid and enforceable claim of the ’699 patent.

8. An actual case or controversy exists between API and Best Buy as to whether Best Buy infringes any valid claim of the ’699 patent.

9. Best Buy is entitled to judgment declaring that it has not infringed any valid claim of the ’699 patent as alleged by API.

SECOND COUNTERCLAIM

(Declaratory Judgment of Invalidity of U.S. Patent No. 6,859,699)

10. Best Buy restates and realleges each of the allegations set forth in Counterclaim paragraphs 1 through 9 above.

11. API alleges that Best Buy has infringed valid claims of the ’699 patent.

12. Best Buy denies these allegations. Best Buy further alleges that the claims of the ’699 patent are invalid for failure to meet the conditions of patentability and/or otherwise comply with one or more of 35 U.S.C. §§ 100 *et seq.*, 101, 102, 103, and/or 112.

13. An actual case or controversy exists between API and Best Buy as to whether the ’699 patent is valid.

14. Best Buy is entitled to judgment declaring that the claims of the ’699 patent are invalid.

DEMAND FOR A JURY TRIAL

14. Best Buy requests a jury trial on all issues triable of right by a jury.

PRAYER FOR RELIEF

WHEREFORE, Defendant/Counterclaimant Best Buy prays for judgment in its favor against Plaintiff/Counterclaim Defendant API as follows:

1. Dismissing API's pretended cause of action with prejudice and on the merits;
2. Declaring that Best Buy has not infringed, contributed to the infringement of, or induced others to infringe, either directly or indirectly, any valid claim of United States Patent No. 6,859,699 as alleged by API;
3. Declaring that United States Patent No. 6,859,699 is invalid;
4. Declaring that this case be deemed exceptional under 35 U.S.C. § 285;
5. Awarding Best Buy its costs, including reasonable attorneys' fees, incurred in connection with this matter; and
6. Awarding such other relief as this Court deems just and equitable.

Respectfully Submitted,

LAW OFFICE OF RICKEY L. FAULKNER, P.C.

s/Rickey L. Faulkner

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Attorneys for Defendant Best Buy Co., Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served on all counsel of record in this matter in compliance with Local Rule CV-5(a). As a result, this document was served upon all counsel who have consented to electronic service under Local Rule CV-5(a)(3)(A) on this 8th day of July, 2009.

s/Rickey L. Faulkner _____
Rickey L. Faulkner