

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

MICROUNITY SYSTEMS ENGINEERING, INC.,)	
)	
)	
Plaintiff,)	Case No. 2:10-CV-00185 (TJW)
)	
v.)	JURY TRIAL DEMANDED
)	
(1) ACER INC., (2) ACER AMERICA CORPORATION, (3) APPLE, INC., (4) AT&T INC., (5) AT&T MOBILITY LLC, (6) CELLCO PARTNERSHIP, (7) EXEDEA, INC., (8) GOOGLE INC., (9) HTC CORPORATION, (10) HTC AMERICA, INC., (11) LG ELECTRONICS, INC., (12) LG ELECTRONICS MOBILECOMM U.S.A., INC., (13) MOTOROLA, INC., (14) NOKIA CORPORATION, (15) NOKIA INC., (16) PALM, INC., (17) QUALCOMM INC., (18) SAMSUNG ELECTRONICS CO., (19) SAMSUNG, SEMICONDUCTOR INC., (20) SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, (21) SPRINT NEXTEL CORPORATION, (22) TEXAS INSTRUMENTS INC.,)	
)	
Defendants.)	

**QUALCOMM INC.'S ANSWER, AFFIRMATIVE DEFENSES, AND
COUNTERCLAIMS TO MICROUNITY SYSTEMS ENGINEERING, INC.'S
COMPLAINT**

Defendant Qualcomm Inc. ("Qualcomm"), through its counsel, respectfully responds to the Complaint for Patent Infringement ("Complaint") filed by Plaintiff, MicroUnity Systems Engineering, Inc. ("Plaintiff") as follows:

I. THE PARTIES

1. Answering Paragraph 1, Qualcomm is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies them.

2. Answering Paragraph 2, Paragraph 2 does not contain any allegations that are directed at Qualcomm, and therefore requires no answer.

3. Answering Paragraph 3, Qualcomm admits that it is a Delaware corporation with its corporate headquarters and principal place of business 5775 Morehouse Drive, San Diego, CA 92121. Qualcomm admits that it developed, manufactures, and sells its Snapdragon series of processors to the suppliers of cell phones and other products; and that products implementing such processors are used, offered for sale and sold in this district and throughout the United States and imported into the United States.

4. Answering Paragraphs 4, Paragraph 4 does not contain any allegations that are directed at Qualcomm, and therefore requires no answer.

5. Answering Paragraph 5, Paragraph 5 does not contain any allegations that are directed at Qualcomm, and therefore requires no answer.

6. Answering Paragraph 6, Paragraph 6 does not contain any allegations that are directed at Qualcomm, and therefore requires no answer.

7. Answering Paragraph 7, Paragraph 7 does not contain any allegations that are directed at Qualcomm, and therefore requires no answer.

8. Answering Paragraph 8, Paragraph 8 does not contain any allegations that are directed at Qualcomm, and therefore requires no answer.

9. Answering Paragraph 9, Paragraph 9 does not contain any allegations that are directed at Qualcomm, and therefore requires no answer.

10. Answering Paragraph 10, Paragraph 10 does not contain any allegations that are directed at Qualcomm, and therefore requires no answer.

11. Answering Paragraph 11, Paragraph 11 does not contain any allegations that are directed at Qualcomm, and therefore requires no answer.

12. Answering Paragraph 12, Paragraph 12 does not contain any allegations that are directed at Qualcomm, and therefore requires no answer.

13. Answering Paragraph 13, Paragraph 13 does not contain any allegations that are directed at Qualcomm, and therefore requires no answer.

14. Answering Paragraph 14, Paragraph 14 does not contain any allegations that are directed at Qualcomm, and therefore requires no answer.

15. Answering Paragraph 15, Paragraph 15 does not contain any allegations that are directed at Qualcomm, and therefore requires no answer.

16. Answering Paragraph 16, Paragraph 16 does not contain any allegations that are directed at Qualcomm, and therefore requires no answer.

II. JURISDICTION AND VENUE

17. Answering Paragraph 17, Qualcomm admits that the Complaint purports to base federal jurisdiction under 28 U.S.C. §§ 1331 and 1338(a). Qualcomm admits that the Complaint purports to allege patent infringement under 35 U.S.C. §§ 1 et seq. Qualcomm denies that the Complaint properly states such claims. Qualcomm denies any wrongdoing or infringement and specifically denies that it has committed acts of direct or indirect infringement within this judicial district or anywhere else. Qualcomm admits that Plaintiff purports to base venue under 28 U.S.C. §§ 1391(b), (c) and 1400(b), but denies that this District is the most convenient venue for adjudication of the claims raised by Plaintiff in this action. Qualcomm is without sufficient knowledge or information regarding the allegations of Paragraph 17 directed at other Defendants

and therefore denies them. Otherwise, this paragraph contains conclusions of law to which no answer is required.

18. Answering Paragraph 18, Qualcomm admits that this case involves some of the same patents involved in prior actions, *MicroUnity Systems Engineering, Inc. v. Intel Corporation and Dell, Inc.*, C.A. No. 2-04CV-120; *MicroUnity Systems Engineering, Inc. v. Sony Computer Entertainment America Inc.*, C.A. No. 2-05CV-505; *MicroUnity Systems Engineering, Inc. v. Advanced Micro Devices, Inc.*, C.A. No. 2-06CV-486; and pending action *MicroUnity Systems Engineering, Inc. v. Acer Inc., et al.*, Case No. 02:10-cv-91, which were filed in the United States District Court for the Eastern District of Texas, Marshall Division. Otherwise, this paragraph contains conclusions of law to which no answer is required.

III. COUNT ONE - INFRINGEMENT OF THE ‘840 PATENT

19. Answering Paragraph 19, Qualcomm admits that United States Patent No. 5,742,840 (“the ‘840 patent”) is attached to Plaintiff’s Complaint as Exhibit C and that on its face it is titled, “General Purpose, Multiple Precision Parallel Operation, Programmable Media Processor.” Qualcomm further admits that the face of the ‘840 patent states that it was issued on April 21, 1998. Qualcomm denies that the ‘840 patent was duly and legally issued. Qualcomm is without knowledge or information sufficient to form a belief as to remaining allegations contained in this paragraph and, therefore, denies these allegations.

20. Answering Paragraph 20, Qualcomm admits that an Ex Parte Reexamination Certificate for the ‘840 patent is attached to Plaintiff’s Complaint as Exhibit C1 and that on its face states that the patentability of claim 11 is confirmed, claim 1 is determined to be patentable as amended, claims 2-6, 8, and 9 are dependent on an amended claim and are determined to be patentable, and claims 7 and 10 are cancelled. Qualcomm further admits that the face of the Ex Parte Reexamination Certificate for the ‘840 patent states that it was issued on May 4, 2010.

Qualcomm denies that the Ex Parte Reexamination Certificate for the '840 patent was properly issued. Qualcomm denies that claim 1, as amended, is substantially identical to the originally-issued claim 1. Otherwise, this paragraph contains conclusions of law to which no answer is required.

21. Answering Paragraph 21, Qualcomm admits that it offers a series of processors called Snapdragon. Qualcomm denies that it has infringed and continues to infringe the '840 Patent by manufacturing, using, offering for sale, importing, and/or selling the Qualcomm Snapdragon Processor or any other processor. Qualcomm is without sufficient knowledge or information regarding the allegations of Paragraph 21 directed at other Defendants and therefore denies them. Qualcomm denies all other allegations in this paragraph and specifically denies any wrongdoing or infringement.

22. Answering Paragraph 22, Qualcomm denies any infringement allegations directed to any Defendant to the extent they are based in whole or in part on the use, sale, importation and/or offer to sell devices incorporating Qualcomm processors. Qualcomm is without sufficient knowledge or information regarding the remaining allegations and therefore denies them.

23. Answering Paragraph 23, Qualcomm denies any infringement allegations directed to any Defendant to the extent they are based in whole or in part on the use, sale, importation and/or offer to sell devices incorporating Qualcomm processors. Qualcomm is without sufficient knowledge or information regarding the remaining allegations and therefore denies them.

24. Answering Paragraph 24, Qualcomm denies each and every allegation contained therein directed at Qualcomm, and specifically denies any wrongdoing or infringement of the '840 patent. Qualcomm further denies that Plaintiff is entitled to any relief from Qualcomm

whatsoever. Qualcomm is without sufficient knowledge or information regarding the allegations of Paragraph 24 directed at other Defendants, and therefore denies them.

25. Answering Paragraph 25, Paragraph 25 does not contain any allegations that are directed at Qualcomm, and therefore requires no answer.

IV. COUNT TWO - INFRINGEMENT OF THE '287 PATENT

26. Answering Paragraph 26, Qualcomm admits that United States Patent No. 7,730,287 ("the '287 patent") is attached to Plaintiff's Complaint as Exhibit U and that on its face it is titled, "Method and Software for Group Floating-Point Arithmetic Operations." Qualcomm further admits that the face of the '287 patent states that it was issued on June 1, 2010. Qualcomm denies that the '287 patent was duly and legally issued. Qualcomm is without knowledge or information sufficient to form a belief as to remaining allegations contained in this paragraph and, therefore, denies these allegations.

27. Answering Paragraph 27, Qualcomm denies any infringement allegations directed to any Defendant to the extent they are based in whole or in part on the use, sale, importation and/or offer to sell devices incorporating Qualcomm processors. Qualcomm is without sufficient knowledge or information regarding the remaining allegations and therefore denies them.

28. Answering Paragraph 28, Qualcomm denies any infringement allegations directed to any Defendant to the extent they are based in whole or in part on the use, sale, importation and/or offer to sell devices incorporating Qualcomm processors. Qualcomm is without sufficient knowledge or information regarding the remaining allegations and therefore denies them.

29. Answering Paragraph 29, Qualcomm denies any infringement allegations directed to any Defendant to the extent they are based in whole or in part on the use, sale, importation and/or offer to sell devices incorporating Qualcomm processors. Qualcomm is without sufficient knowledge or information regarding the remaining allegations and therefore denies them.

30. Answering Paragraph 30, Qualcomm denies any infringement allegations directed to any Defendant to the extent they are based in whole or in part on the use, sale, importation and/or offer to sell devices incorporating Qualcomm processors. Qualcomm is without sufficient knowledge or information regarding the remaining allegations and therefore denies them.

31. Answering Paragraph 31, Paragraph 31 does not contain any allegations that are directed at Qualcomm, and therefore requires no answer.

V. DEMAND FOR JURY TRIAL

32. Paragraph 32 demands a jury trial, and therefore requires no answer.

VI. AFFIRMATIVE DEFENSES

33. Without altering the burdens of proof, Qualcomm asserts the following affirmative and other defenses. Qualcomm reserves the right to amend its answer with additional defenses as further information is obtained.

FIRST AFFIRMATIVE DEFENSE

[NON-INFRINGEMENT]

34. Qualcomm alleges that it does not infringe and has not infringed, directly or indirectly, literally or by the doctrine of equivalents, any valid and enforceable claim of United States Patent No. 5,742,840 (“the ‘840 patent”).

SECOND AFFIRMATIVE DEFENSE

[INVALIDITY]

35. The claims of the ‘840 patent are invalid, unenforceable and/or void for failure to satisfy one of more of the requirements for patentability set forth in Title 35 of the United States Code, including without limitation 35 U.S.C. §§ 41.

36. The claims of the '840 patent are invalid, unenforceable and/or void for failure to satisfy one of more of the requirements for patentability set forth in Title 35 of the United States Code, including without limitation 35 U.S.C. §§ 101.

37. The claims of the '840 patent are invalid, unenforceable and/or void for failure to satisfy one of more of the requirements for patentability set forth in Title 35 of the United States Code, including without limitation 35 U.S.C. §§ 102.

38. The claims of the '840 patent are invalid, unenforceable and/or void for failure to satisfy one of more of the requirements for patentability set forth in Title 35 of the United States Code, including without limitation 35 U.S.C. §§ 103.

39. The claims of the '840 patent are invalid, unenforceable and/or void for failure to satisfy one of more of the requirements for patentability set forth in Title 35 of the United States Code, including without limitation 35 U.S.C. §§ 112.

40. The claims of the '840 patent are invalid, unenforceable and/or void for failure to satisfy one of more of the requirements for patentability set forth in Title 35 of the United States Code, including without limitation 35 U.S.C. §§ 116.

41. The claims of the '840 patent are invalid, unenforceable and/or void for failure to satisfy one of more of the requirements for patentability set forth in Title 35 of the United States Code, including without limitation 35 U.S.C. §§ 282.

THIRD AFFIRMATIVE DEFENSE

[LIMITATIONS ON DAMAGES AND RECOVERY]

42. Pursuant to the requirements of 35 U.S.C. §§ 286-288, Plaintiff's ability to recover damages and/or costs is limited.

FOURTH AFFIRMATIVE DEFENSE

[PROSECUTION HISTORY ESTOPPEL]

43. Plaintiff's claims of patent infringement are barred in whole or in part by the doctrine of prosecution history estoppel.

FIFTH AFFIRMATIVE DEFENSE

[28 U.S.C. § 1498]

44. Plaintiff's claims of patent infringement are barred in whole or in part by 28 U.S.C. § 1498 to the extent they encompass claims for products sold to and/or designed for the United States.

SIXTH AFFIRMATIVE DEFENSE

[INTERVENING RIGHTS]

45. Plaintiff's claims for damages and relief are barred, in part, by the doctrine of intervening rights including that set forth in 35 U.S.C. §§ 307 and 252 (as referenced in 35 U.S.C. § 307).

SEVENTH AFFIRMATIVE DEFENSE

[FAILURE TO MARK]

46. On information and belief, Plaintiff is barred or limited from recovering damages, in whole or in part, by the failure to mark, by itself or by one or more parties licensed to practice one or more of the asserted patents, as required by 35 U.S.C. § 287.

EIGHTH AFFIRMATIVE DEFENSE

[INEQUITABLE CONDUCT]

47. The strong public interest in properly issued patents is best served when the United States Patent and Trademark Office (the "USPTO") evaluates all information material to patentability during prosecution. Each individual involved in the filing and prosecuting of a

patent application owes a duty of good faith, candor, and honesty to that Office. That duty places a substantial burden on those involved in preparing a patent application. Intentionally making false statements to the USPTO or intentionally failing to disclose information material to the patentability of an application will render the entire patent unenforceable.

48. Qualcomm is informed and believes that during the prosecution of the applications leading to the ‘840, ‘061, ‘318, ‘356, ‘131, ‘217, ‘708, ‘367, ‘366, ‘806, and ‘973 Patents (the “Asserted Patents of the ‘840 Patent Family”), the named inventors, John Moussouris and Craig Hansen, and/or the MicroUnity attorneys who prosecuted these patents, Kenneth Cage in particular, failed to comply with their obligations under 37 C.F.R. § 1.56 and failed to discharge their duty of candor to the Patent Office during the prosecution of the applications leading to the issuance of these patents. Moussouris, Hansen, and/or Cage with intent to deceive the Patent Office examiner, knowingly and intentionally (1) withheld material information from the USPTO during prosecution, and (2) improperly attempted to change the priority dates of certain patents. Because Moussouris, Hansen, and/or Cage failed to comply with the duty of candor, the Asserted Patents of the ‘840 Patent Family are unenforceable.

Withholding Material Information from the USPTO

49. Upon information and belief, Moussouris and Hansen were aware of prior art references and the sale of prior art processors or systems that they knew to be material to the prosecution of patent applications leading to the ‘840, ‘061, and ‘318 Patents, yet knowingly and intentionally withheld that information from the USPTO.

Hewlett Packard References

50. Upon information and belief, prior to the issue date of the ‘840, ‘061, and ‘318 Patents, MicroUnity was involved in a technology collaboration with Hewlett Packard (“HP”) and several of their engineers, including Ruby Lee, Jerry Huck, and Michael Mahon.

51. HP is a company that designed and manufactured (among other things) microprocessors and computer systems in the 1990s.

52. Upon information and belief, no later than January 1994, Hewlett Packard offered for sale the PA 7100LC microprocessor, part of the HP PA-RISC family of microprocessors. The PA 7100LC included multimedia extensions to the microprocessor instruction set that implemented dynamic partitioning for parallel processing of packed data elements.

53. Upon information and belief, Lee was involved in the design of the PA 7100LC multimedia instruction set extensions, and was also involved in the technology collaboration between MicroUnity and HP.

54. Lee published articles detailing multimedia instruction set extensions and the hardware necessary to implement multimedia extensions. Several of Lee’s articles were published prior to August 16, 1995 (the “Lee Articles”), which was the filing date of the patent application that later matured into the ‘840 Patent. One example is *Accelerating Multimedia with Enhanced Microprocessors*, IEEE Micro, April 1995. Lee also filed at least two patent applications relating to dynamic partitioning for parallel processing that claim a priority date of November, 1993, and are therefore prior art to the MicroUnity ‘840, ‘061, and ‘318 Patents and the other Asserted Patents of the ‘840 Patent Family. These two patent applications matured into U.S. Patent Nos. 5,636,351 and 5,390,135.

55. Upon information and belief, Lee, Huck, and Mahon were all actively involved in the design and implementation of the second-generation multimedia instruction set extensions for the HP PA 8000 microprocessor in 1995 and 1996, prior to the issue date of the '840, '061, and '318 Patents. These multimedia instruction set extensions also implemented dynamic partitioning for parallel processing of packed data elements. Upon information and belief, Lee, Huck, and Mahon were all also involved in the technology collaboration with MicroUnity.

56. Upon information and belief, Moussouris, as CEO of MicroUnity, and Hansen, as chief architect of the MicroUnity media processor, were in contact with the HP team (and Lee, Huck, and Mahon, in particular) during the technology collaboration, and were aware or became aware of the multimedia instruction set extensions to the HP processors prior to the issue date of the '840 Patent.

57. Despite knowledge of the multimedia extensions and their operation, Moussouris and Hansen intentionally did not disclose the prior art HP microprocessors or Lee Articles during the prosecution of the '840, '061, and '318 Patents and therefore intentionally failed to disclose to the USPTO all information known to Moussouris and Hansen to be material to patentability.

58. The HP 7100LC microprocessor and the Lee Articles, including the article entitled *Accelerating Multimedia with Enhanced Microprocessors*, were material to the USPTO's examination of the '840, '061, and '318 Patents. During the prosecution of the '840 Patent, on May 28, 1997 Moussouris and Hansen distinguished their alleged invention from the prior art by arguing that the cited prior art references did not include dynamic partitioning of media data that is narrower than the data path for parallel processing. During the prosecution

of the '061 Patent, on February 11, 1998 Moussouris and Hansen distinguished their alleged invention from the prior art by arguing that the cited prior art references did not disclose the dynamic partitioning and parallel processing of a plurality of data streams, the width of the data path being equal to or narrower than the data path. The '318 Patent also claimed dynamic partitioning.

59. On information and belief, Moussouris and Hansen did not cite any references during the prosecution of the '840 Patent that disclosed or performed dynamic partitioning for parallel processing.

60. On information and belief, Moussouris and Hansen did not cite any references during the prosecution of the '061 Patent that disclosed or performed dynamic partitioning for parallel processing.

61. On information and belief, Moussouris and Hansen did not cite any references during the prosecution of the '318 Patent that disclosed or performed dynamic partitioning for parallel processing.

62. The HP 7100LC microprocessor performed dynamic partitioning of media data that is narrower than the data path for parallel processing. The Lee Articles, including the article entitled *Accelerating Multimedia with Enhanced Microprocessors*, disclosed dynamic partitioning of media data that is narrower than the data path for parallel processing.

63. The materiality of the Lee Articles is further demonstrated by the rejection of claims 1, 2, 7, 10-14, and 22 of the '061 Patent during reexamination based on the Lee article entitled *Accelerating Multimedia with Enhanced Microprocessors*.

64. Upon information and belief, despite their knowledge of the materiality of the HP prior art processors and publications, including the PA 7100LC microprocessor and the Lee

article entitled *Accelerating Multimedia with Enhanced Microprocessors*, Moussouris and Hansen intentionally withheld this information during the prosecution of ‘840, ‘061, and ‘318 Patents from the USPTO in violation of their duty of candor.

Intel and Philips References

65. Upon information and belief, on August 15, 1995 an email was circulated to the MicroUnity Zeus media processor design team discussing competitive microprocessor products (“MicroUnity Zeus email”). Upon information and belief, Moussouris was copied on the MicroUnity Zeus email. Upon information and belief, on August 16, 1995, the MicroUnity Zeus email was forwarded to Craig Hansen. August 16, 1995 was also the filing date of the patent application that would mature into the ‘840 Patent.

66. The MicroUnity Zeus email included an update from the MicroUnity marketing group. According to the MicroUnity Zeus email, one of the MicroUnity employees was performing a competitive analysis of other microprocessor companies. The MicroUnity Zeus email noted that the publicized business plans of the competitive microprocessor companies was “remarkably similar” to MicroUnity’s plans, in which multimedia capabilities were added to the microprocessor. In particular, the MicroUnity Zeus email noted Intel’s plans to add DSP functions to its processors (“Intel’s plans”) and Philips’s plans to include specialized operations for video compression and communications into its new VLIW processor core (“Philips’s plans”). Even though the approach taken in these processors was noted in this email to be “remarkably similar,” no information regarding Intel’s plans or Phillips’s plans or any Intel references or any Philips references were cited during the prosecution of the patent application for the ‘840, ‘061, and ‘318 Patents.

67. Upon information and belief, the MicroUnity Zeus email was referring to Intel's intent to add DSP-like functionality to its processors by including the MMX instruction set, which allowed dynamic partitioning of the execution unit for parallel processing.

68. Upon information and belief, both Moussouris and Hansen read the MicroUnity Zeus email. Upon information and belief, both Moussouris and Hansen were aware of these competing processor architectures, including Intel's plans and Philips's plans, discussed in the MicroUnity Zeus email. Neither Moussouris nor Hansen cited any information regarding Intel's plans, Philips's plans, Philips references or Intel references during the prosecution of the patent applications leading to the '840, '061, or '318 Patents, despite the fact that the plans for Philips and Intel to add DSP and multimedia functions were "remarkably similar."

69. Upon information and belief, Moussouris and Hansen knew of Intel's MMX instruction set extensions prior to the issue date of the '840 and '061 Patents.

70. Upon information and belief, Moussouris and Hansen knew of Intel's MMX instruction set extensions prior to October 13, 1998, the filing date of the '318 Patent.

71. Upon information and belief, Moussouris and Hansen intentionally failed to cite any references discussing the Intel MMX instruction set extensions in the '840, '061, and '318 Patents and therefore intentionally failed to disclose to the Office all information known to Moussouris and Hansen to be material to patentability.

72. On information and belief, Intel's plans and the Intel MMX instruction set were material to the prosecution of the '840, '061, and '318 Patents. On information and belief, Intel's plans disclosed dynamic partitioning of media data that is narrower than the data path for parallel processing. The Intel MMX instruction set defines instructions for dynamic partitioning of media data that is narrower than the data path for parallel processing.

Moussouris and Hansen intentionally withheld this information from the USPTO in violation of their duty of candor.

Sun UltraSPARC and HP PA-RISC References

73. Upon information and belief, Hansen knew of the Sun UltraSPARC multimedia instruction set extensions and the HP PA-RISC multimedia instruction set extensions on or before November 7, 1995.

74. Upon information and belief, on November 7, 1995, Hansen responded to questions on Usenet, an internet bulletin board service, regarding a presentation given by Moussouris and Hansen on the operation of the MicroUnity media processor.

75. Upon information and belief, a questioner on the Usenet board made the following statement and question: “The title of the slide and the accompanying diagram indicate that these instructions operate simultaneously on many packed data items within their operands. (Sometimes called ‘multigauge.’ Much like the PA-RISC and UltraSPARC multimedia extensions.) The slide indicates that the size of the sub-register data items can be from 1 to 64 bits. How is the size specified?” Upon information and belief, Hansen responded via Usenet, stating “The size of the data is specified as part of the operation code of the instruction.”

76. On information and belief, Hansen read and understood the references to the PA-RISC and UltraSPARC multimedia extensions, and understood that the statement “these instructions operate simultaneously on many packed data items within their operands” to mean that the multimedia extensions included instructions for dynamic partitioning for parallel processing.

77. The multimedia extensions to the PA-RISC and UltraSPARC processors were material to the prosecution of the '840, '061, and '318 Patents.

78. On information and belief, the multimedia extensions to the UltraSPARC processors included instructions for dynamic partitioning of media data that is narrower than the data path for parallel processing.

79. Moussouris and Hansen intentionally withheld information on the PA-RISC and UltraSPARC processors from the USPTO in violation of their duty of candor.

Unenforceability Due to Failure to Disclose References

80. The materiality of the references described in paragraphs 47 through 79, together with Moussouris's and Hansen's knowledge of (1) the reference's existence, and (2) the claimed features of the '840, '061, and '318 Patents, shows that Moussouris and Hansen intentionally withheld these references from the USPTO during prosecution of the '840, '061, and '318 Patents with an intent to deceive the USPTO.

81. Moussouris and Hansen understood that the USPTO required them to disclose prior art that was material to patentability, including the references described in paragraphs 47 through 79. Moussouris and Hansen signed a Combined Declaration/Power of Attorney document. This document included a declaration that "We acknowledge the duty to disclose information which is material to the examination of this application in accordance with Title 37, Code of Federal Regulations, § 1.56(a)." Despite signing this declaration, Moussouris and Hansen intentionally withheld information that was material and non-cumulative to the examination of the '840, '061, and '318 Patents. This intentional withholding of material and non-cumulative information constitutes inequitable conduct and renders the '840, '061, and '318 Patents unenforceable.

82. The remaining asserted patents from the '840 Patent Family are all directly descended from either the '840 Patent, or both the '840 and '318 Patents. Upon information and belief, as described in paragraphs 47 through 81, Moussouris and Hansen obtained the '840 and '318 Patents through inequitable conduct in their dealings with the USPTO, without which the '840 and '318 Patents would not have been granted, or would have been granted in an amended form. Based on this inequitable conduct, the '366, '356, '217, '708, '973, '367, '131, and '806 Patents are unenforceable as well.

WHEREFORE, Qualcomm denies that any of its products, services, or processes infringes any claim of the '840 patent identified in the Complaint and further denies that Plaintiff is entitled to any judgment against Qualcomm whatsoever. Qualcomm asks that the Complaint be dismissed with prejudice, that judgment be entered for Qualcomm, and that Qualcomm be awarded attorneys' fees incurred in defending against the Complaint, together with such other relief the Court deems appropriate.

VII. COUNTERCLAIMS

JURISDICTION AND THE PARTIES

83. Qualcomm is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business at 5775 Morehouse Drive, San Diego, CA 92121.

84. Upon information and belief, MicroUnity Systems Engineering, Inc. ("MicroUnity") is a corporation duly organized and existing under the laws of the State of California, with its principal place of business at 376 Martin Avenue, Santa Clara, CA 95050.

85. The following counterclaims for declaratory relief arise under the Declaratory Judgment Act and the Patent Laws of the United States, more particularly Title 28 U.S.C. §§ 2201, 2202 and Title 35 U.S.C. §§ 41 *et seq.*, respectively. This Court has jurisdiction over the

subject matter of these counterclaims under, without limitation, Title 28 U.S.C. §§ 1331, 1338, 1367, 2201 and 2202.

86. Qualcomm maintains its right to seek a transfer of venue on forum non conveniens grounds pursuant to 28 U.S.C. § 1404. In the event of such transfer, Qualcomm consents to the transfer of its counterclaims set forth herein. To the extent that this action remains in this District, venue is appropriate because Plaintiffs have consented to the propriety of venue in this Court by filing their claim for patent infringement in this Court, in response to which these counterclaims are asserted.

87. Plaintiff has submitted to the personal jurisdiction of this Court by bringing the present action.

COUNT 1

[NON-INFRINGEMENT – U.S. PATENT NO. 5,742,840]

88. An actual and justiciable controversy exists between Qualcomm and Plaintiff as to Qualcomm's non-infringement of the '840 patent, as evidenced by Plaintiff's Complaint and Qualcomm's Answer to Plaintiff's Complaint.

89. Qualcomm does not infringe directly or indirectly, literally or by the doctrine of equivalents, any valid and enforceable any claim of the '840 patent and believes that Plaintiff's Complaint has been filed without good cause.

90. Qualcomm requests that this Court enter a judgment that Qualcomm does not infringe directly or indirectly, literally or by the doctrine of equivalents, and has not infringed any claim of the '840 patent.

COUNT 2

[INVALIDITY – U.S. PATENT NO. 5,742,840]

91. An actual and justiciable controversy exists between Qualcomm and Plaintiff as to the validity of the ‘840 patent, as evidenced by Plaintiff’s Complaint and Qualcomm’s Answer to Plaintiff’s Complaint.

92. The claims of the ‘840 patent are invalid for failure to comply with one or more of the conditions and requirements of patentability set forth in Title 35 of the United States Code, including without limitation 35 U.S.C. §§ 41, 101, 102, 103, 112, 116 and/or 282. For example, the ‘840 patent is obvious under 35 U.S.C. § 103 at least in view of U.S. Patent No. 5,636,351 or the Hewlett Packard PA 7100LC processor, combined with Nobuhiro Ide, A 320-MFLOPS CMOS Floating-Point Processing Unit for Superscalar Processors, IEEE Journal of Solid-State Circuits, March 1993 and the knowledge of a person having ordinary skill in the art of microprocessor design. Additional references will be disclosed as part of Qualcomm’s invalidity contentions pursuant to local rules of this Court.

93. Qualcomm is entitled to judgment from this Court finding that the ‘840 patent is invalid pursuant to Title 35 of the United States Code, including without limitation pursuant to 35 U.S.C. §§ 41, 101, 102, 103, 112, 116 and/or 282.

COUNT 3

[INEQUITABLE CONDUCT – U.S. PATENT NO. 5,742,840]

94. Qualcomm realleges and incorporates by reference the allegations set forth in paragraphs 47 through 82 as if set in full herein.

95. An actual and justiciable controversy exists between Qualcomm and MicroUnity concerning the enforceability of the ‘840 patent by virtue of MicroUnity’s assertion of infringement of this patent by Qualcomm, an assertion which Qualcomm denies.

96. The '840 patent is unenforceable due to inequitable conduct committed by MicroUnity as more specifically described in paragraphs 47 through 82, and Qualcomm is entitled to a declaration to that effect.

97. This is an exceptional case entitling Qualcomm to an award of its attorneys' fees incurred in connection with this action pursuant to 35 U.S.C. § 285.

WHEREFORE, Qualcomm prays for relief as follows:

A. That the '840 patent, and every claim thereof, be declared not infringed, invalid, and unenforceable.

B. That Plaintiff takes nothing by its Complaint and that the Complaint be dismissed with prejudice.

C. That, pursuant to 35 U.S.C. § 285, Fed. R. Civ. P. 11, and/or other applicable authority, the Court finds that Plaintiff's conduct in commencing and pursuing these actions renders this an exceptional case and that Qualcomm be awarded its attorneys' fees incurred in connection with this action; and

D. That Qualcomm be awarded such other relief as the Court shall deem just and reasonable.

DATED Wednesday, August 11, 2010.

Respectfully submitted,

/s/ Harry L. Gillam Jr.

Harry L. Gillam, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who 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 Wednesday, August 11, 2010.

/s/ Harry L. Gillam Jr.