Microunity Systems Engineering, Inc v. Acer Inc. et al Doc. 112

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

MICROUNITY SYSTEMS ENGINEERING, INC., a California corporation,

Plaintiff,

v.

(1) ACER INC., a Republic of China corporation, (2) ACER AMERICA CORPORATION, a California corporation, (3) APPLE, INC., a California corporation, (4) AT&T INC., a Delaware corporation, (5) AT&T MOBILITY LLC, a Delaware limited liability company, (6) CELLCO PARTNERSHIP, a Delaware partnership, (7) EXEDEA, INC., a Texas corporation, (8) GOOGLE INC., a Delaware corporation, (9) HTC CORPORATION, a Republic of China corporation, (10) HTC AMERICA, INC., a Texas corporation, (11) LG Electronics, Inc., a Korean limited company, (12) LG Electronics, Mobilecomm U.S.A., Inc., a California corporation, (13) MOTOROLA, INC., a Delaware corporation, (14) NOKIA CORPORATION a Finnish corporation, (15) NOKIA INC., a Delaware corporation, (16) PALM, INC., a Delaware corporation, (17) QUALCOMM INC., a Delaware corporation, (18) SAMSUNG ELECTRONICS CO., LTD., a Korean limited company, (19) SAMSUNG, SEMICONDUCTOR INC., a California corporation, (20) SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, a Delaware limited liability company, (21) SPRINT NEXTEL CORPORATION, a Kansas corporation, (22) TEXAS INSTRUMENTS INC., a Delaware corporation,

Defendants.

CASE NO. 2:10-CV-00185

JURY TRIAL DEMANDED

APPLE INC'S ANSWER TO MICROUNITY'S
COMPLAINT FOR PATENT INFRINGEMENT AND COUNTERCLAIMS

Defendant Apple Inc. ("Apple"), by and through its undersigned counsel, as and for its

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Answer to MicroUnity System Engineering, Inc.'s ("MicroUnity") Complaint for Patent Infringement (the "Complaint") states as follows:

THE PARTIES

1. Admitted.

2. Apple lacks sufficient knowledge or information to admit or deny the allegations of Paragraph 2 of the Complaint, and, on that basis, these allegations are denied.

3. Apple lacks sufficient knowledge or information to admit or deny the allegations of Paragraph 3 of the Complaint, and, on that basis, these allegations are denied.

4. Apple admits that Samsung manufactures the S5PC100 and the A4 for use in certain Apple products. Apple admits that Apple sells products such as the iPhone 3GS, iPod Touch 32GB and 64GB, and the iPad and iPad 3G, and that such products are used, offered for sale and sold in this District and throughout the United States and imported into the United States by Apple. Apple lacks sufficient knowledge or information to admit or deny the remaining allegations of paragraph 4 of the Complaint, and, on that basis, these allegations are denied. To the extent not specifically admitted herein, the allegations of Paragraph 4 are denied.

5. Apple lacks sufficient knowledge or information to admit or deny the allegations of Paragraph 5 of the Complaint, and, on that basis, these allegations are denied.

6. Apple lacks sufficient knowledge or information to admit or deny the allegations of Paragraph 6 of the Complaint, and, on that basis, these allegations are denied.

7. Apple lacks sufficient knowledge or information to admit or deny the allegations of Paragraph 7 of the Complaint, and, on that basis, these allegations are denied.

8. Apple lacks sufficient knowledge or information to admit or deny the allegations of Paragraph 8 of the Complaint, and, on that basis, these allegations are denied.

9. Apple lacks sufficient knowledge or information to admit or deny the allegations of Paragraph 9 of the Complaint, and, on that basis, these allegations are denied.

10. Apple lacks sufficient knowledge or information to admit or deny the allegations of Paragraph 10 of the Complaint, and, on that basis, these allegations are denied.

11. Apple lacks sufficient knowledge or information to admit or deny the allegations of Paragraph 11 of the Complaint, and, on that basis, these allegations are denied.

12. Apple lacks sufficient knowledge or information to admit or deny the allegations of Paragraph 12 of the Complaint, and, on that basis, these allegations are denied.

13. Apple admits that it is a corporation duly organized and existing under the laws of the state of California, with its principal place of business at 1 Infinite Loop, Cupertino, CA 95014. Apple admits that certain products that Apple sells include the A4. Apple admits that it uses the A4 in certain Apple products and that Samsung manufactures the A4 for Apple. Apple admits that Apple sells products such as the iPhone 3GS, iPod Touch 32GB and 64GB, and the iPad and iPad 3G, and that such products include certain software provided by Apple. Apple admits that the iPhone 3GS, iPod Touch 32GB and 64GB, and the iPad and iPad 3G are used, offered for sale and sold in this District and throughout the United States and imported into the United States by Apple. To the extent not specifically admitted, the allegations of Paragraph 13 are denied.

14. Apple lacks sufficient knowledge or information to admit or deny the allegations of Paragraph 14 of the Complaint, and, on that basis, these allegations are denied.

15. Apple lacks sufficient knowledge or information to admit or deny the allegations of Paragraph 15 of the Complaint, and, on that basis, these allegations are denied.

16. On information and belief, Apple admits that AT&T sells the iPhone 3GS and

related services, and that the iPhone 3GS is used, offered for sale and sold in this District and throughout the United States and imported into the United States. Apple lacks sufficient knowledge or information to admit or deny the allegations of Paragraph 16 of the Complaint, and, on that basis, these allegations are denied. To the extent not specifically admitted, the allegations of Paragraph 16 are denied.

JURISDICTION AND VENUE

17. Apple admits that this Court has jurisdiction over actions for patent infringement under 28 U.S.C. §§ 1331 and 1338(a). Apple further admits that venue in this District is proper under 28 U.S.C. §§ 1391(b)-(c) and 1400(b), but denies that venue is convenient for this case. Apple admits it has transacted and does transact business in this District, but denies that it has committed acts of infringement in this District or elsewhere. Apple does not have sufficient knowledge or information to admit or deny the remaining allegations of Paragraph 17. To the extent not specifically admitted herein, these allegations are denied.

18. In response to Paragraph 18, Apple responds that the prior cases involved different products and different defendants, and denies that this case is related to the prior actions. Apple admits that it was not a party to the prior actions. Based on information and belief, Apple denies that United States Patent No. 5,742,840 C1 and United States Patent No. 7,730,287 B1 were subject to the prior actions, and admits that United States Patent No. 5,742,840 C1 is also at issue in the pending action Case No. 02:10-cv-91.

INFRINGEMENT OF U.S. PATENT NO. 5,742,840 C1

19. Apple admits that United States Patent No. 5,742,840 C1 (the "'840 Patent) bears

the title “General Purpose, Multiple Precision Parallel Operation, Programmable Media Processor,” and indicates that the “Date of Patent” is April 21, 1998. Apple further admits that the face of the ‘840 Patent identifies “Microunity Systems Engineering, Inc.” as the “Assignee.” Apple further admits that a copy of the ‘840 Patent is attached as Exhibit C to the Complaint. Apple denies that the ‘840 Patent was duly and legally issued. Apple does not have sufficient knowledge or information as to the truth of the remaining allegations set forth in Paragraph 19, and, on that basis, these allegations are denied.

20. Apple admits that the ‘840 patent has been the subject of a reexamination proceeding, and that a copy of the Reexamination Certificate for the ‘840 Patent appears to be attached as Exhibit C1 to the Complaint. Apple denies that the claims of the ‘840 Patent are patentable. Apple admits that amended claim 1 is not substantially identical to claim 1 as originally issued, and that it has an effective date of May 4, 2010. To the extent not specifically admitted herein, the remaining allegations of Paragraph 20 are denied.

21. The allegations of Paragraph 21 are denied to the extent they relate to Apple or any Apple product. Apple does not have sufficient knowledge or information as to the truth of the remaining allegations set forth in Paragraph 21, and, on that basis, these allegations are denied.

22. The allegations of Paragraph 22 are denied to the extent they relate to Apple or any Apple product. Apple does not have sufficient knowledge or information as to the truth of the remaining allegations set forth in Paragraph 22, and, on that basis, these allegations are denied.

23. The allegations of Paragraph 23 are denied to the extent they relate to Apple or any Apple product. Apple does not have sufficient knowledge or information as to the truth of

the remaining allegations set forth in Paragraph 23, and, on that basis, these allegations are denied.

24. Apple denies infringement and further denies that MicroUnity is entitled to any damages or injunctive relief on account of Apple or any Apple product. Apple lacks sufficient knowledge or information to admit or deny the remaining allegations of Paragraph 24 of the Complaint, and, on that basis, these allegations are denied.

25. To the extent that the allegations of Paragraph 25 relate to Apple or any Apple product, Apple denies infringement and denies any right or bases to allege willfulness or seek enhanced damages or attorneys' fees. Apple does not have sufficient knowledge or information as to the truth of the remaining allegations set forth in Paragraph 25, and, on that basis, these allegations are denied.

INFRINGEMENT OF U.S. PATENT NO. 7,730,287 B2

26. Apple admits that United States Patent No. 7,730,287 B2 (the "'287 Patent) bears the title "Method and Software for Group Floating-Point Arithmetic Operations," and indicates that the "Date of Patent" is June 1, 2010. Apple further admits that the face of the '287 Patent identifies "Microunity Systems Engineering, Inc." as the "Assignee." Apple further admits that a copy of the '287 Patent appears to be attached as Exhibit U to the Complaint. Apple denies that the '287 Patent was duly and legally issued. Apple does not have sufficient knowledge or information as to the truth of the remaining allegations set forth in Paragraph 26, and, on that basis, these allegations are denied.

27. The allegations of Paragraph 27 are denied to the extent they relate to Apple or any Apple product. Apple does not have sufficient knowledge or information as to the truth of

the remaining allegations set forth in Paragraph 27, and, on that basis, these allegations are denied.

28. Denied.

29. The allegations of Paragraph 29 are denied to the extent they relate to Apple or any Apple product. Apple does not have sufficient knowledge or information as to the truth of the remaining allegations set forth in Paragraph 29, and, on that basis, these allegations are denied.

30. Apple denies infringement and further denies that MicroUnity is entitled to any damages or injunctive relief on account of Apple or any Apple product. Apple lacks sufficient knowledge or information to admit or deny the remaining allegations of Paragraph 30 of the Complaint, and, on that basis, these allegations are denied.

31. To the extent the allegations of Paragraph 31 relate to Apple or any Apple product, Apple denies infringement and denies any right or bases to allege willfulness or seek enhanced damages or attorneys' fees. Apple does not have sufficient knowledge or information as to the truth of the remaining allegations set forth in Paragraph 31, and, on that basis, these allegations are denied.

JURY DEMAND

32. To the extent that a response is required, Apple does not object to, and hereby demands, a trial by jury on all issues so triable.

RESPONSE TO MICROUNITY'S PRAYER FOR RELIEF

33. Apple denies that MicroUnity is entitled to any of the relief sought in its prayer for relief against Apple, its officers, directors, agents, servants, employees, attorneys, and all

others acting by or through Apple. MicroUnity's prayer should, therefore, be denied in its entirety and with prejudice, and MicroUnity should take nothing. Apple asks that judgment be entered for Apple and that this action be found to be an exceptional case under 35 U.S.C. § 285 entitling Apple to be awarded attorneys' fees in defending against MicroUnity's Complaint, together with such other and further relief the Court deems appropriate.

APPLE'S AFFIRMATIVE DEFENSES

Without assuming any burden other than that imposed by operation of law, Apple asserts the following affirmative defenses to MicroUnity's claims against Apple:

FIRST AFFIRMATIVE DEFENSE
(Failure to State a Claim)

34. MicroUnity fails to state a claim upon which relief can be granted. Furthermore, MicroUnity has failed to set forth with sufficient specificity MicroUnity's claim that Apple indirectly infringes any of the Asserted Patents, or any possible basis to allege in the future any claim of willful infringement.

SECOND AFFIRMATIVE DEFENSE
(Non-Infringement)

35. Apple has not infringed, either directly, by inducing infringement by others, by contributing to the infringement of others, or at all, any claim of the asserted patents.

THIRD AFFIRMATIVE DEFENSE
(Invalidity)

36. MicroUnity's purported claims for infringement of the Asserted Patents are barred because each and every claim of the Asserted Patents is invalid for failure to comply with the requirements of Title 35, United States Code, including, but not limited to Sections 101, 102, 103, 112 or 116.

FOURTH AFFIRMATIVE DEFENSE
(Prosecution Laches)

37. MicroUnity's purported claims for infringement of the Asserted Patents are barred because the Asserted Patents are unenforceable due to prosecution laches.

FIFTH AFFIRMATIVE DEFENSE
(Equitable Defenses)

38. MicroUnity's claims for relief are barred in whole or in part by the equitable doctrines of laches, equitable estoppel and/or unclean hands.

SIXTH AFFIRMATIVE DEFENSE
(Prosecution History Estoppel)

39. On information and belief, MicroUnity is barred, under the doctrine of Prosecution History Estoppel, from construing the claims of any of the asserted patents in such a way as may cover any of Apple's products or processes by reasons of statements made to the United States Patent and Trademark Office ("USPTO") during the prosecution of the applications that led to the issuance of the respective patents.

SEVENTH AFFIRMATIVE DEFENSE
(Statutory Limitations on Damages)

40. MicroUnity is barred in whole or in part from recovering damages under 35 U.S.C. §§ 286 and/or 287.

EIGHTH AFFIRMATIVE DEFENSE
(Use/Manufacture By/For Government)

41. To the extent that any accused product or method has been used or manufactured by or for the United States Government, MicroUnity's claims and demands for relief are barred by 28 U.S.C. § 1498.

NINTH AFFIRMATIVE DEFENSE
(No Injunctive Relief)

42. MicroUnity's claim for injunctive relief is barred because there exists an adequate

remedy at law and MicroUnity's claims otherwise fail to meet the requirements for such relief.

TENTH AFFIRMATIVE DEFENSE
(Fed. R. Civ. P. 20)

43. Apple is not a party permitted to be joined in this action under Fed. R. Civ. P. 20, as no right to relief alleged against Apple is alleged to or does arise out of the same transactions, occurrences or series of transactions or occurrences as any claim for relief alleged against any other defendant.

ELEVENTH AFFIRMATIVE DEFENSE
(Intervening Rights)

44. MicroUnity's claims for damages and injunctive relief are precluded in whole or in part by the intervening rights doctrine, including that set forth in 35 U.S.C. §§ 307 and/or 252 (as referenced in § 307).

Reservation of All Affirmative Defenses

45. Apple reserves all affirmative defenses permitted under the Federal Rules of Civil Procedure, the patent laws of the United States and/or at law or in equity, that may now exist or in the future be available based on discovery and further investigation in this case.

COUNTERCLAIMS

In accordance with Federal Rules of Civil Procedure 13 and 20, Apple Inc. ("Apple") alleges the below counterclaims against plaintiff MicroUnity Systems Engineering, Inc. ("MicroUnity"):

Jurisdiction and Venue

46. Apple is a corporation organized and existing under the laws of the State of California, with its principal place of business at 1 Infinite Loop, Cupertino, CA 95014.

47. On information and belief, 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.

48. These Counterclaims arise under the United States patent laws, 35 U.S.C. § 101 *et seq*. These counterclaims seek declaratory relief for which this Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338, 2201, and 2202.

49. Venue in this District is appropriate over these counterclaims because MicroUnity has consented to the propriety of venue in this Court by filing its claims for patent infringement in this Court, in response to which these counterclaims are asserted.

Facts Concerning United States Patent No. 5,742,840 C1

50. MicroUnity alleges that MicroUnity is the owner of United States Patent No. 5,742,840 C1 (the "'840 Patent"), which, on its face, is entitled "General Purpose, Multiple Precision Parallel Operation, Programmable Media Processor," indicates that the "Date of Patent" is April 21, 1998, and identifies "Microunity Systems Engineering, Inc." as the "Assignee." A copy of the '840 Patent is attached as Exhibit C to MicroUnity's Complaint.

Facts Concerning United States Patent No. 7,730,287 B1

51. MicroUnity claims to be the owner of United States Patent No. 7,730,287 B1 (the "'287 Patent"), which, on its face, is entitled "Method and Software for Group Floating-Point Arithmetic Operations," indicates that the "Date of Patent" is June 1, 2010, and identifies "Microunity Systems Engineering, Inc." as the "Assignee." A copy of the '287 Patent is attached as Exhibit U to MicroUnity's Complaint.

Count One - United States Patent No. 5,742,840 C1

Declaration of Noninfringement

52. Apple realleges and incorporates by reference the allegations set forth in Paragraphs 1-51 above as if fully set forth herein.

53. An actual and justiciable controversy exists between Apple and MicroUnity with respect to the ‘840 Patent because MicroUnity brought this action against Apple and others alleging that Apple infringes the ‘840 Patent, which allegation Apple denies. Absent a declaration of noninfringement, MicroUnity will continue to wrongfully assert the ‘840 Patent against Apple, and, thereby, cause Apple irreparable injury and damage.

54. Apple has not infringed and does not infringe any valid or enforceable claim of the ‘840 Patent in any manner, willfully or otherwise, and is entitled to a declaration to that effect.

55. Pursuant to 35 U.S.C. § 285, this is an exceptional case entitling Apple to an award of its attorneys’ fees incurred in connection with this action.

Count Two - United States Patent No. 7,730,287 B1

Declaration of Noninfringement

56. Apple realleges and incorporates by reference the allegations set forth in Paragraphs 1-55 above as if fully set forth herein.

57. An actual and justiciable controversy exists between Apple and MicroUnity with respect to the ‘287 Patent because MicroUnity brought this action against Apple and others alleging that Apple infringes the ‘287 Patent, which allegation Apple denies. Absent a declaration of noninfringement, MicroUnity will continue to wrongfully assert the ‘287 Patent against Apple, and, thereby, cause Apple irreparable injury and damage.

58. Apple has not infringed and does not infringe any valid or enforceable claim of the ‘287 Patent in any manner, willfully or otherwise, and is entitled to a declaration to that effect.

59. Pursuant to 35 U.S.C. § 285, this is an exceptional case entitling Apple to an award of its attorneys’ fees incurred in connection with this action.

Count Three - United States Patent No. 5,742,840 C1

Declaration of Invalidity

60. Apple realleges and incorporates by reference the allegations set forth in Paragraphs 1-59 above as if fully set forth herein.

61. An actual and justiciable controversy exists between Apple and MicroUnity with respect to the validity of the claims of the ‘840 Patent because MicroUnity brought this action against Apple and others alleging that Apple infringes the ‘840 Patent, which allegation Apple denies. Absent a declaration of invalidity, MicroUnity will continue to wrongfully assert the ‘840 Patent against Apple, and, thereby, cause Apple irreparable injury and damage.

62. Each and every claim of the ‘840 Patent is invalid under the provisions of Title 35, United States Code, including, but not limited to Sections 101, 102, 103, and/or 112, and Apple is entitled to a declaration to that effect.

63. Pursuant to 35 U.S.C. § 285, this is an exceptional case entitling Apple to an award of its attorneys’ fees incurred in connection with this action.

Count Four - United States Patent No. 7,730,287 B1

Declaration of Invalidity

64. Apple realleges and incorporates by reference the allegations set forth in Paragraphs 1-63 above as if fully set forth herein.

65. An actual and justiciable controversy exists between Apple and MicroUnity with respect to the validity of the claims of the ‘287 Patent because MicroUnity brought this action against Apple and others alleging that Apple infringes the ‘287 Patent, which allegation Apple denies. Absent a declaration of invalidity, MicroUnity will continue to wrongfully assert the claims of the ‘287 Patent against Apple, and thereby cause Apple irreparable injury and damage.

66. Each and every claim of the ‘287 Patent is invalid under the provisions of Title 35, United States Code, including, but not limited to Sections 101, 102, 103, and/or 112, and Apple is entitled to a declaration to that effect.

67. Pursuant to 35 U.S.C. § 285, this is an exceptional case entitling Apple to an award of its attorneys’ fees incurred in connection with this action pursuant to 35 U.S.C. § 285.

Dated: August 11, 2010

Respectfully submitted

FISH & RICHARDSON P.C.

By: /s/ Garland T. Stephens

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APPLE INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on August 11, 2010 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by FedEx.

/s/ Khoa Nguyen