

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

**MICROUNITY SYSTEMS ENGINEERING, §
INC. §**

Plaintiff, §

v. §

ACER INC., ET AL., §

Defendants. §

CASE NO. 2:10-cv-185-TJW-CE

REQUEST FOR JURY TRIAL

**ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS OF
GOOGLE INC. TO
MICROUNITY SYSTEMS ENGINEERING, INC.’S COMPLAINT**

Defendant Google Inc. (“Google”) hereby answers the Complaint (“Complaint”) filed by Plaintiff MicroUnity Systems Engineering, Inc. (“MicroUnity”) on June 3, 2010. Google denies each and every allegation contained in the Complaint that is not expressly admitted below.

PARTIES

1. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1 of the Complaint, and therefore denies those allegations.

2. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2 of the Complaint, and therefore denies those allegations.

3. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3 of the Complaint, and therefore denies those allegations.

4. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4 of the Complaint, and therefore denies those allegations.

5. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5 of the Complaint, and therefore denies those allegations.

6. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6 of the Complaint, and therefore denies those allegations.

7. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7 of the Complaint, and therefore denies those allegations.

8. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8 of the Complaint, and therefore denies those allegations.

9. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 9 of the Complaint, and therefore denies those allegations.

10. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 10 of the Complaint, and therefore denies those allegations.

11. Google admits that it is a corporation duly organized and existing under the laws of the state of Delaware and has a principal place of business in Mountain View, California. Google further admits that it has offered for sale and sold a cell phone handset called the Nexus One that was manufactured by High Tech Computer Corporation (“HTC”) and imported by HTC into the United States for sale. Google further admits that it developed software that was installed on the Nexus One cell phone handsets that were offered for sale and sold. Except as expressly admitted herein, Google denies each and every allegation set forth in paragraph 11 of the Complaint.

12. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12 of the Complaint, and therefore denies those allegations.

13. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 13 of the Complaint, and therefore denies those allegations.

14. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 14 of the Complaint, and therefore denies those allegations.

15. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 15 of the Complaint, and therefore denies those allegations.

16. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 16 of the Complaint, and therefore denies those allegations.

JURISDICTION AND VENUE

17. Google admits that the Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) because the Complaint purports to set forth an action under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.* Google also admits that it transacts business in this district and that venue is proper in the Eastern District of Texas under §§ 1391(c) and 1400(b), although Google expressly reserves the right to contest whether the Eastern District of Texas is a convenient forum under, among other things, the doctrine of forum non conveniens. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 17 regarding the other defendants and on that basis denies each and every such allegation contained therein. Except as expressly admitted herein, Google denies each and every allegation set forth in paragraph 17 of the Complaint.

18. Google admits that the present action involves one patent (U.S. Patent No. 5,742,840) that was asserted in the prior actions, *MicroUnity Systems Engineering, Inc. v. Intel Corp. and Dell, Inc.*, C.A. No. 2:04-cv-120; *MicroUnity Systems Engineering, Inc. v. Sony Computer Entertainment America Inc.*, C.A. No. 2:05-cv-505; *MicroUnity Systems Engineering, Inc. v. Advanced Micro Devices, Inc.*, C.A. No. 2:06-cv-486, and in pending action *MicroUnity*

Systems Engineering, Inc. v. Acer Inc., et al., C.A. No. 2:10-cv-91. Google also admits that each of these actions was filed in the United States District Court for the Eastern District of Texas, Marshall Division. Except as expressly admitted herein, Google denies each and every allegation set forth in paragraph 18 of the Complaint.

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

19. Google admits that U.S. Patent No. 5,742,840 (“the ’840 patent”) was issued on April 21, 1998, and is entitled, “General Purpose, Multiple Precision Parallel Operation, Programmable Media Processor.” Google also admits that a copy of the ’840 patent was attached as Exhibit C to the Complaint. Google denies that the ’840 patent was duly and legally issued. Except as expressly admitted or denied herein, Google lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 19, and therefore denies those allegations.

20. Google admits that the ’840 patent has been the subject of a reexamination proceeding, reexamination request number 90/007,583, in which the United States Patent and Trademark Office confirmed the patentability of claim 11, determined that claim 1 was patentable as amended, determined that claims 2-6, 8 and 9 were patentable as dependent on amended claim 1, and canceled claims 7 and 10. Google also admits that a copy of the Reexamination Certificate 5,742,840 C1 is attached to the Complaint as Exhibit C1. The remainder of paragraph 20 contains an improper legal assertion that does not require a response. To the extent that the remainder of paragraph 20 requires a response, Google denies each and every allegation regarding Google contained in Paragraph 20.

21. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 21 of the Complaint, and therefore denies those allegations.

22. Google admits that Google used, sold, and/or offered to sell the Nexus One cell phone handset. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 22 regarding other defendants, and therefore denies those allegations. Except as expressly admitted herein, Google denies each and every allegation set forth in paragraph 22 of the Complaint.

23. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 23 of the Complaint, and therefore denies those allegations.

24. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 24 of the Complaint regarding other defendants, and therefore denies those allegations. Except as expressly admitted herein, Google denies each and every allegation set forth in paragraph 24 of the Complaint. Google specifically denies that MicroUnity is entitled to any of the relief requested in the Complaint.

25. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 25 of the Complaint, and therefore denies those allegations.

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

26. Google admits that U.S. Patent No. 7,730,287 (“the ’287 patent”) was issued on June 1, 2010 and is entitled, “Method and Software for Group Floating-Point Arithmetic Operations.” Google also admits that a copy of the ’287 patent was attached as Exhibit U to the Complaint. Google denies that the ’287 patent was duly and legally issued. Except as expressly admitted or denied herein, Google lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 26, and therefore denies those allegations.

27. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 27 of the Complaint, and therefore denies those allegations.

28. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 28 of the Complaint, and therefore denies those allegations.

29. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 29 of the Complaint, and therefore denies those allegations.

30. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 30 of the Complaint, and therefore denies those allegations.

31. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 31 of the Complaint, and therefore denies those allegations.

JURY DEMAND

32. Google hereby demands that all issues be determined by jury.

PRAYER FOR RELIEF

In response to MicroUnity's prayer for relief, Google is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding the other defendants and on that basis denies each and every such allegation contained therein. In response to MicroUnity's prayer for relief against Google, Google denies each and every allegation contained therein and, further, Google specifically denies that MicroUnity is entitled to any of the relief it seeks; specifically denies that MicroUnity is entitled to a judgment that the '840 patent and/or '287 patent has been infringed by Google; specifically denies that MicroUnity is entitled to enhanced damages based on any alleged infringement by Google; specifically denies that MicroUnity is entitled to any injunctive relief; specifically denies that MicroUnity is entitled to a judgment and/or an order requiring Google to pay MicroUnity any damages, costs, expenses, prejudgment, and/or post-judgment interest; and specifically denies that MicroUnity is entitled to attorneys' fees

AFFIRMATIVE DEFENSES

Without acknowledging that Google bears the burden of proof or burden of persuasion with respect thereto, Google asserts the following affirmative defenses to MicroUnity's Complaint.

FIRST AFFIRMATIVE DEFENSE

33. MicroUnity's Complaint fails to state any claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

34. Google has not infringed and is not infringing any valid and enforceable claim of the '840 patent directly, indirectly, contributorily, or by inducement either literally or under the doctrine of equivalents.

THIRD AFFIRMATIVE DEFENSE

35. The claims of the '840 patent are invalid and/or unenforceable under 35 U.S.C. § 101 *et seq.*, including, but not limited to, §§ 101, 102, 103, and 112.

FOURTH AFFIRMATIVE DEFENSE

36. Based on representations, admissions, arguments, and amendments made by or on behalf of MicroUnity during the prosecution of the '840 patent, MicroUnity's claims against Google are barred in whole or in part by the doctrine of prosecution history estoppel.

FIFTH AFFIRMATIVE DEFENSE

37. MicroUnity is not entitled to any injunctive relief because it has not suffered irreparable harm and has an adequate remedy at law.

SIXTH AFFIRMATIVE DEFENSE

38. MicroUnity's claims for damages are barred because it failed to mark relevant products as required by 35 U.S.C. § 287.

SEVENTH AFFIRMATIVE DEFENSE

39. MicroUnity's claims for past damages are barred in part under the doctrine of intervening rights.

EIGHTH AFFIRMATIVE DEFENSE

40. MicroUnity's claims are barred in whole or in part under the equitable doctrines of laches, estoppel, waiver, and/or acquiescence.

NINTH AFFIRMATIVE DEFENSE

41. MicroUnity is precluded from recovering costs under 35 U.S.C. § 288.

TENTH AFFIRMATIVE DEFENSE

42. On information and belief, some or all of the defendants have been improperly joined in a single action, and Google asserts its right to a separate trial.

RESERVATION OF ADDITIONAL DEFENSES

Google reserves all defenses under the Patent Laws of the United States, Title 35 of the United States Code, the Federal Rules of Civil Procedure, and any other defenses, at law or in equity, that may now exist or come to light in the future based on discovery and further investigation into MicroUnity's allegations.

**COUNTERCLAIMS OF DEFENDANT
AND COUNTERCLAIMANT GOOGLE INC.**

43. For its counterclaims against MicroUnity, Defendant and Counterclaimant Google alleges as follows:

NATURE AND BASIS OF THE ACTION

44. The Court has jurisdiction to declare the rights and interests of the parties related to these counterclaims for declaratory judgment of patent invalidity and noninfringement under 28 U.S.C. §§ 2201 and 2202.

JURISDICTION AND PARTIES

45. Google's counterclaims arise under the Patent Laws of the United States, Title 35 of the United States Code and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202.

46. Google is a corporation organized and existing under the laws of the State of Delaware and has its principal place of business in Mountain View, California.

47. On information and belief, counterclaim defendant MicroUnity is a California corporation with its principal place of business at 376 Martin Avenue, Santa Clara, California 95050.

48. To the extent this action remains in this judicial district, venue is appropriate because MicroUnity consented to this venue by filing its Complaint here, and the present counterclaims are in response to the allegations contained in the Complaint.

COUNT I

DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF U.S. PATENT NO. 5,742,840

49. Google refers to and incorporates herein the allegations of paragraphs 43-48 of the counterclaims above.

50. On April 21, 1998, the USPTO issued the '840 patent, titled "General Purpose, Multiple Precision Parallel Operation, Programmable Media Processor."

51. MicroUnity claims to be the assignee of and to hold all rights and interest in the '840 patent.

52. There exists an actual and justiciable controversy within the meaning of 28 U.S.C. §§ 2201 and 2202 between Google and MicroUnity with respect to the alleged infringement of the '840 patent.

53. Google has not infringed and does not infringe, directly, indirectly, contributorily, or by inducement, any valid and enforceable claim of the '840 patent either literally or under the doctrine of equivalents.

COUNT II

DECLARATORY JUDGMENT OF INVALIDITY OF U.S. PATENT NO. 5,742,840

54. Google refers to and incorporates herein the allegations of paragraphs 43-48 of the counterclaims above.

55. On April 21, 1998, the USPTO issued the '840 patent, titled "General Purpose, Multiple Precision Parallel Operation, Programmable Media Processor."

56. MicroUnity claims to be the assignee of and to hold all rights and interest in the '840 patent.

57. There exists an actual and justiciable controversy within the meaning of 28 U.S.C. §§ 2201 and 2202 between Google and MicroUnity with respect to the validity and/or enforceability of the '840 patent.

58. The claims of the '840 patent are invalid and/or unenforceable for failure to meet the conditions for patentability of the Patent Laws of the United States, Title 35 of the United States Code, including, but not limited to, 35 U.S.C. §§ 101, 102, 103, and/or 112.

DEMAND FOR JURY TRIAL

59. Google hereby demands that all issues raised in its counterclaims be determined by jury.

PRAYER FOR RELIEF

Google requests a judgment that:

(a) MicroUnity is not entitled to any relief, whether legal or equitable, from its suit against Google and that the Complaint be dismissed with prejudice;

- (b) Google has not infringed and is not infringing any valid and enforceable claim of the '840 patent, either directly or indirectly;
- (c) the claims of the '840 patent are invalid and/or unenforceable;
- (d) finds this case exceptional under 35 U.S.C. § 285 and awards Google its reasonable costs of suit and attorneys' fees; and
- (e) awards Google other and further relief as this court may deem just and proper.

DATED: August 11, 2010

Respectfully submitted,

/s/ Jennifer Parker Ainsworth
Jennifer Parker Ainsworth
State Bar No. 00784720
jainsworth@wilsonlawfirm.com
WILSON, ROBERTSON & CORNELIUS, P.C.
P.O. Box 7339
Tyler, Texas 75711
(903) 509-5000
(903) 509-5092 (facsimile)
jainsworth@wilsonlawfirm.com

Mark E. Miller
markmiller@omm.com
Luann L. Simmons
lsimmons@omm.com
Nora M. Puckett
npuckett@omm.com
O'MELVENY & MYERS LLP
Two Embarcadero Center, Suite 2800
San Francisco, California 94111
Telephone: (415) 984-8700
Facsimile: (415) 984-8701

**ATTORNEYS FOR DEFENDANT
GOOGLE INC.**

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this motion was served on all counsel who have consented to electronic service, Local Rule CV-5(a)(3)(A), on this the 11th day of August, 2010.

/s/ Jennifer P. Ainsworth _____
Jennifer P. Ainsworth