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

MICROUNITY SYSTEMS ENGINEERING, INC.,

Plaintiff,

v.

(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., LTD.,
(19) SAMSUNG SEMICONDUCTOR INC.,
(20) SAMSUNG TELECOMMUNICATIONS AMERICA, LLC,
(21) SPRINT NEXTEL CORPORATION,
(22) TEXAS INSTRUMENTS INC.

Defendants.

Case No. 2:10-cv-00185-TJW-CE

DEFENDANT CELLCO PARTNERSHIP d/b/a VERIZON WIRELESS' ANSWER TO PLAINTIFF'S COMPLAINT AND AFFIRMATIVE DEFENSES

JURY

DEFENDANT VERIZON WIRELESS' ANSWER TO PLAINTIFF'S COMPLAINT AND AFFIRMATIVE DEFENSES

Defendant Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless"), by way of Answer to Plaintiff Microunity Systems Engineering, Inc.'s ("Microunity") Complaint, says:

THE PARTIES[1]

1. Verizon Wireless lacks information sufficient to form a belief as to the truth of the allegations contained in paragraph 1.

2. Verizon Wireless lacks information sufficient to form a belief as to the truth of the allegations contained in paragraph 2.

3. Verizon Wireless lacks information sufficient to form a belief as to the truth of the allegations contained in paragraph 3.

4. Verizon Wireless lacks information sufficient to form a belief as to the truth of the allegations contained in paragraph 4.

5. Verizon Wireless lacks information sufficient to form a belief as to the truth of the allegations contained in paragraph 5.

6. Verizon Wireless lacks information sufficient to form a belief as to the truth of the allegations contained in paragraph 6.

7. Verizon Wireless lacks information sufficient to form a belief as to the truth of the allegations contained in paragraph 7.

8. Verizon Wireless lacks information sufficient to form a belief as to the truth of the allegations contained in paragraph 8.

9. Verizon Wireless lacks information sufficient to form a belief as to the truth of the allegations contained in paragraph 9.

10. Verizon Wireless lacks information sufficient to form a belief as to the truth of the allegations contained in paragraph 10.

[1] For ease of reference, Verizon Wireless incorporates the outline headings used in the Complaint. To the extent that such headings make factual allegations, Verizon Wireless does not adopt or admit such statements and instead denies them.

11. Verizon Wireless lacks information sufficient to form a belief as to the truth of the allegations contained in paragraph 11.

12. Verizon Wireless lacks information sufficient to form a belief as to the truth of the allegations contained in paragraph 12.

13. Verizon Wireless lacks information sufficient to form a belief as to the truth of the allegations contained in paragraph 13.

14. Verizon Wireless admits that it is a general partnership organized and existing under the laws of the State of Delaware and that it has its principal place of business at One Verizon Way, Basking Ridge, New Jersey 07920. Verizon Wireless admits that it is indirectly owned by Verizon Communications Inc. and Vodafone Group Plc. Verizon Wireless admits only that it resells certain cellular phones manufactured by HTC, Palm, and Motorola throughout the United States and in the Eastern District of Texas, but denies that its resale of these cellular phones constitutes infringement of any valid, enforceable claim of any asserted patent, contributes to the infringement of any valid, enforceable claim of any asserted patent, and/or induces the infringement of any valid, enforceable claim of any asserted patent. Verizon Wireless denies that it has sold or plans to sell the HTC/Google Nexus One. Verizon Wireless denies all remaining allegations contained in paragraph 14.

15. Verizon Wireless lacks information sufficient to form a belief as to the truth of the allegations contained in paragraph 15.

16. Verizon Wireless lacks information sufficient to form a belief as to the truth of the allegations contained in paragraph 16.

JURISDICTION AND VENUE

17. Paragraph 17 contains conclusions of law and not averments of fact to which an answer is deemed required, but insofar as an answer may be deemed required, Verizon Wireless

admits that this action purports to arise under the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.*, and that this Court has jurisdiction over the subject matter under 28 U.S.C. §§ 1331 and 1338(a). Verizon Wireless admits only that venue appears to be proper in this Court under 28 U.S.C. §§ 1391(c) and 1400(b), but specifically denies that it has committed acts of infringement in this District or any other District. Verizon Wireless denies all remaining allegations contained in paragraph 17 to the extent they relate to Verizon Wireless, and lacks information sufficient to form a belief as to the truth of any remaining allegations in paragraph 17 to the extent they relate to other defendants.

18. Paragraph 18 contains conclusions of law and not averments of fact to which an answer is required, but insofar as an answer may be deemed required, Verizon Wireless admits only that this case involves some of the same patents involved in the prior actions *MicroUnity Systems Engineering, Inc. v. Intel Corporation and Dell, Inc.*, Case No. 2:04-cv-120, *MicroUnity Systems Engineering, Inc. v. Sony Computer Entertainment America Inc.*, Case No. 06-cv-486, *MicroUnity Systems Engineering, Inc. v. Advanced Micro Devices, Inc.*, Case No. 2:06-cv-486, and the pending action *MicroUnity Systems Engineering, Inc. v. Acer Inc., et al.*, Case No. 2:10-cv-91. Verizon Wireless lacks information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 18.

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

19. Verizon Wireless admits that United States Patent No. 5,742,840 ("the '840 patent") states as its title "GENERAL PURPOSE, MULTIPLE PRECISION PARALLEL OPERATION, PROGRAMMABLE MEDIA PROCESSOR," and that Exhibit C to the Complaint appears to be a copy of the '840 patent. Verizon Wireless admits that, on its face, the '840 patent lists an issuance date of April 21, 1998. The remainder of paragraph 19 contains conclusions of law and not averments of fact to which an answer is required, but insofar as an

answer may be deemed required, Verizon Wireless lacks information sufficient to form a belief as to the truth of the allegations contained in paragraph 19.

20. Paragraph 20 contains conclusions of law and not averments of fact to which an answer is deemed required, but insofar as an answer may be deemed required, Verizon Wireless states that the reexamination file history speaks for itself and denies any characterizations inconsistent therewith. Verizon Wireless admits only that Exhibit C1 appears to be a copy of the '840 Reexamination Certificate. Verizon Wireless denies all remaining allegations contained in paragraph 20.

21. Verizon Wireless lacks information sufficient to form a belief as to the truth of the allegations contained in paragraph 21.

22. Verizon Wireless lacks information sufficient to form a belief as to the truth of the allegations contained in paragraph 22.

23. Paragraph 23 contains conclusions of law and not averments of fact to which an answer is required, but insofar as an answer may be deemed required, Verizon Wireless denies that it has committed or is committing any wrongful acts including infringement of any valid enforceable claim of the '840 patent, contributing to the infringement of any valid enforceable claim of the '840 patent, and/or inducing the infringement of any valid enforceable claim of the '840 patent. Verizon Wireless denies all remaining allegations contained in paragraph 23 to the extent they relate to Verizon Wireless, and lacks information sufficient to form a belief as to the truth of the allegations in paragraph 23 to the extent they relate to other defendants.

24. Paragraph 24 contains conclusions of law and not averments of fact to which an answer is required, but insofar as an answer may be deemed required, Verizon Wireless denies that it has committed or is committing any wrongful acts including infringement of any valid

enforceable claim of the ‘840 patent, contributing to the infringement of any valid enforceable claim of the ‘840 patent, and/or inducing the infringement of any valid enforceable claim of the ‘840 patent. Verizon Wireless denies that Microunity has suffered any damages or will continue to be damaged as a result of any actions by Verizon Wireless. Verizon Wireless denies that Microunity is irreparably harmed as a result of any actions by Verizon Wireless and denies that Microunity is entitled to any injunctive relief against Verizon Wireless from this Court. Verizon Wireless denies all remaining allegations contained in paragraph 24 to the extent they relate to Verizon Wireless, and lacks information sufficient to form a belief as to the truth of the allegations in paragraph 24 to the extent they relate to other defendants.

25. Paragraph 25 contains conclusions of law and not averments of fact to which an answer is required, but insofar as an answer may be deemed required, Verizon Wireless denies that any averments relating to alleged willfulness by Verizon Wireless will have evidentiary support after discovery. Verizon Wireless lacks information sufficient to form a belief as to the truth of the allegations in paragraph 25 to the extent they relate to other defendants.

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

26. Verizon Wireless admits that United States Patent No. 7,730,287 (“the ‘287 patent”) states as its title “METHOD AND SOFTWARE FOR GROUP FLOATING-POINT ARITHMETIC OPERATIONS,” and that Exhibit U to the Complaint appears to be a copy of the ‘287 patent. Verizon Wireless admits that, on its face, the ‘287 patent lists an issuance date of June 1, 2010. The remainder of paragraph 26 contains conclusions of law and not averments of fact to which an answer is required, but insofar as an answer may be deemed required, Verizon Wireless lacks information sufficient to form a belief as to the truth of the allegations contained in paragraph 26.

27. Verizon Wireless lacks information sufficient to form a belief as to the truth of the allegations contained in paragraph 27.

28. Verizon Wireless lacks information sufficient to form a belief as to the truth of the allegations contained in paragraph 28.

29. Verizon Wireless lacks information sufficient to form a belief as to the truth of the allegations contained in paragraph 29.

30. Paragraph 30 contains conclusions of law and not averments of fact to which an answer is required, but insofar as an answer may be deemed required, Verizon Wireless lacks information sufficient to form a belief as to the truth of the allegations contained in paragraph 30.

31. Paragraph 31 contains conclusions of law and not averments of fact to which an answer is required, but insofar as an answer may be deemed required, Verizon Wireless lacks information sufficient to form a belief as to the truth of the allegations in paragraph 31.

JURY DEMAND

32. Verizon Wireless agrees with MicroUnity's demand for a jury trial.

PRAYER FOR RELIEF

33. Verizon Wireless denies that MicroUnity is entitled to any of the relief sought in its prayer for relief.

34. To the extent not expressly admitted, Verizon Wireless denies each and every allegation in the Complaint.

AFFIRMATIVE DEFENSES

35. The Complaint fails to state a claim upon which relief can be granted.

36. The '840 patent is invalid and/or unenforceable under one or more provisions of Title 35, United States Code, including but not limited to 35 U.S.C. §§ 101, 102, 103 and 112.

37. Verizon Wireless' actions with respect to the importation, use, sale or offer for sale of services or products or any other accused activity do not directly or indirectly infringe, contribute to the infringement or induce the infringement of any properly construed, valid and/or enforceable claims of the '840 patent.

38. As and for a separate affirmative defense, Verizon Wireless alleges on information and belief that any claim for damages for patent infringement by Plaintiff is limited by 35 U.S.C. § 287 to only those damages occurring after proper and sufficient notice of infringement to Verizon Wireless.

39. Verizon Wireless' actions with respect to the importation, use, sale or offer for sale of services or products or any other accused activity may be covered by one or more licenses.

40. MicroUnity is not entitled to injunctive relief against Verizon Wireless because any alleged injury to MicroUnity as a result of Verizon Wireless' alleged activities is not immediate or irreparable, and MicroUnity has an adequate remedy at law.

41. MicroUnity is not entitled to enhanced or increased damages for willful infringement because Verizon Wireless has not engaged in any conduct that meets the applicable standard for willful infringement.

42. MicroUnity's claims are barred by equitable doctrines including the doctrine of laches and equitable estoppel.

43. Verizon Wireless reserves the right to assert affirmatively any other matter that constitutes an affirmative defense under applicable law and rules.

PRAYER FOR RELIEF

WHEREFORE, Verizon Wireless prays that this Court enter judgment:

A. dismissing the Complaint with prejudice and denying each and every prayer for relief contained therein;

B. declaring that none of the claims of the ‘840 patent are directly or indirectly infringed by the use, sale or offer for sale of any of Verizon Wireless’ services or products or any other activity attributable to Verizon Wireless, either literally or under the doctrine of equivalents;

C. declaring that the claims of the ‘840 patent are invalid and/or unenforceable;

D. declaring that MicroUnity is not entitled to any injunctive relief against Verizon Wireless;

E. declaring that this case is “exceptional” within the meaning of 35 U.S.C. § 285, and that all costs and expenses of this action, including reasonable attorneys’ fees, be awarded to Verizon Wireless; and

F. granting Verizon Wireless such further relief as this Court may deem necessary, just or proper.

Respectfully submitted,

Dated: August 11, 2010

By: 

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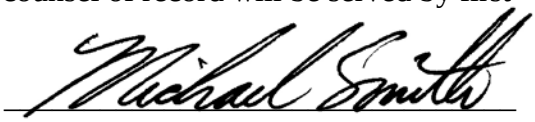
CERTIFICATE OF SERVICE

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 EM/ECF system per Local Rule CV-5(a)(3) on this 11th day of August 2010. Any other counsel of record will be served by first class U.S. mail on this same date.



Michael Smith