

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

Case No. 2:10-CV-00185 (TJW)

JURY TRIAL DEMANDED

Defendants. §

**DEFENDANTS AT&T INC. AND AT&T MOBILITY LLC'S
ANSWER TO MICROUNITY SYSTEMS ENGINEERING, INC.'S
COMPLAINT**

Defendants AT&T Inc. and AT&T Mobility LLC (together “AT&T”) answer Plaintiff MicroUnity Systems Engineering, Inc.’s (“MicroUnity”) Complaint for Patent Infringement (“Complaint”) as follows:

I. AT&T’S ANSWER

PARTIES

1. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 of the Complaint, and therefore denies the same.
2. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2 of the Complaint, and therefore denies the same.
3. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3 of the Complaint, and therefore denies the same.
4. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4 of the Complaint, and therefore denies the same.
5. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5 of the Complaint, and therefore denies the same.
6. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6 of the Complaint, and therefore denies the same.
7. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7 of the Complaint, and therefore denies the same.
8. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8 of the Complaint, and therefore denies the same.
9. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 9 of the Complaint, and therefore denies the same.

10. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10 of the Complaint, and therefore denies the same.

11. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11 of the Complaint, and therefore denies the same.

12. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12 of the Complaint, and therefore denies the same.

13. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13 of the Complaint, and therefore denies the same.

14. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 14 of the Complaint, and therefore denies the same.

15. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 15 of the Complaint, and therefore denies the same.

16. AT&T admits that AT&T Inc. is a corporation duly organized and existing under the laws of the state of Delaware, with its principle place of business at 208 S. Akard St., Dallas, Texas 75201. AT&T admits that AT&T Mobility LLC is a limited liability company duly organized and existing under the laws of the state of Delaware. AT&T admits that AT&T Mobility LLC is owned by subsidiaries of AT&T Inc. AT&T denies that AT&T Mobility LLC's principal place of business is at 5565 Glenridge Connector, Atlanta, GA 30342. AT&T admits that AT&T Mobility LLC sells cell phones such as the LG eXpo and Apple iPhone 3GS. AT&T denies all other allegations of paragraph 16.

JURISDICTION AND VENUE

17. AT&T admits that the complaint constitutes an action for patent infringement under Title 35, United States Code, and that this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a). AT&T does not contest that it is subject to the Court's general personal

jurisdiction. AT&T denies that the Complaint states a valid cause of action of infringement against AT&T. AT&T 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. AT&T admits that AT&T Mobility LLC conducts business in this Judicial District, but denies that a patent infringement cause of action has arisen as a result of their activities and specifically denies that such acts have constituted patent infringement in this district or elsewhere. AT&T denies that AT&T Inc. conducts any business in this Judicial District, and AT&T denies that AT&T Inc. has an established principle place of business in this Judicial District. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in the remainder of paragraph 17 of the Complaint, and therefore denies the same.

18. AT&T 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, which were filed in the United States District Court for the Eastern District of Texas, Marshall Division. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in the remainder of paragraph 18 of the Complaint, and therefore denies the same.

COUNT 1

(Alleged Infringement of United States Patent No. 5,742,840)

19. AT&T 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.” AT&T further admits that the

face of the '840 patent states both that it was issued on April 21, 1998 and that MicroUnity Systems Engineering, Inc. is the assignee. AT&T denies that the '840 patent was duly and legally issued. As to the remaining allegations, AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 19 of the Complaint, and therefore denies the same.

20. AT&T 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. AT&T further admits that the face of the Ex Parte Reexamination Certificate for the '840 patent states that it was issued on May 4, 2010. AT&T denies that the Ex Parte Reexamination Certificate for the '840 patent was properly issued. AT&T denies that claim 1, as amended, is substantially identical to the originally-issued claim 1. As to the remaining allegations, AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 20 of the Complaint, and therefore denies the same.

21. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 21 of the Complaint, and therefore denies the same.

22. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 22 of the Complaint, and therefore denies the same.

23. AT&T denies each and every infringement allegation directed at AT&T, and specifically denies any wrongdoing or infringement of the '840 Patent. As to the remaining allegations, AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 23 of the Complaint, and therefore denies the same.

24. AT&T denies each and every infringement allegation directed at AT&T, and specifically denies any wrongdoing or infringement of the '840 Patent. As to the remaining allegations, AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 24 of the Complaint, and therefore denies the same.

25. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 25 of the Complaint, and therefore denies the same.

COUNT 2

(Alleged Infringement of United States Patent No. 7,730,287)

26. AT&T 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.” AT&T further admits that the face of the '287 patent states both that it was issued on June 1, 2010 and that MicroUnity Systems Engineering, Inc. is the assignee. AT&T denies that the '287 patent was duly and legally issued. As to the remaining allegations, AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 26 of the Complaint, and therefore denies the same.

27. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 27 of the Complaint, and therefore denies the same.

28. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 28 of the Complaint, and therefore denies the same.

29. AT&T denies each and every infringement allegation directed at AT&T, and specifically denies any wrongdoing or infringement of the '287 Patent.

30. AT&T denies each and every infringement allegation directed at AT&T, and specifically denies any wrongdoing or infringement of the '287 Patent. As to the remaining allegations,

AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 30 of the Complaint, and therefore denies the same.

31. AT&T denies each and every infringement allegation directed at AT&T, and specifically denies any wrongdoing or infringement of the '287 Patent. As to the remaining allegations, AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 31 of the Complaint, and therefore denies the same.

DEMAND FOR JURY TRIAL

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

PLAINTIFF'S ALLEGED REMEDIES AND PRAYER

As to AT&T, AT&T denies that Plaintiff is entitled to any of the relief sought in the Complaint. As to the other defendants, AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding relief specified in the Complaint, and therefore denies the same.

To the extent not expressly addressed above, the factual allegations in the Complaint are denied.

II. ADDITIONAL DEFENSES

33. For its additional defenses, AT&T incorporates by reference as if fully set forth herein its responses to Paragraphs 1-32 to Plaintiff's Complaint. AT&T asserts these additional defenses without admitting that AT&T bears the burden of proof on any of them.

FIRST ADDITIONAL DEFENSE

(Non-Infringement)

34. AT&T does not infringe and has not infringed, literally or by the doctrine of equivalents, any valid and enforceable claim of the '840 Patent and '287 Patent, either directly or indirectly, such as, contributorily or by inducement.

SECOND ADDITIONAL DEFENSE

(Invalidity)

35. On information and belief, the claims of the asserted '840 Patent and '287 Patent are invalid for failure to comply with the conditions and requirements for patentability specified in, but not limited to 35 U.S.C. §§ 41, 101, 102, 103, 112, 116, and 282.

THIRD ADDITIONAL DEFENSE

(Limitations on Damages)

36. Plaintiff's ability to recover damages under 35 U.S.C. §§ 286-287 is limited.

FOURTH ADDITIONAL DEFENSE

(Prosecution History Estoppel)

37. Under the doctrine of prosecution history estoppel, Plaintiff is estopped from asserting the doctrine of equivalents as to the arguments and amendments made to obtain allowance of the patent application that issued as the '840 Patent and '287 Patent.

FIFTH ADDITIONAL DEFENSE

(28 U.S.C. § 1498)

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

SIXTH ADDITIONAL DEFENSE

(Acquiescence, Estoppel, Laches, Waiver)

39. Plaintiff is barred by the doctrines of acquiescence, estoppel, laches, and/or waiver from enforcing the '840 Patent and '287 Patent against AT&T.

SEVENTH ADDITIONAL DEFENSE

(Limitations on Costs)

40. Plaintiff is precluded from recovering costs under 35 U.S.C. § 288.

EIGHT ADDITIONAL DEFENSE

(Failure to Mark)

41. On information and belief, Plaintiff has failed to mark or cause to be marked patented articles with the numbers of the '840 Patent and '287 Patent.

42. 35 U.S.C. § 287 precludes Plaintiff from recovering any damages for alleged infringement, if any, that occurred prior to the time it provided the required notice to AT&T.

NINTH ADDITIONAL DEFENSE

(No Entitlement to Injunctive Relief)

43. Plaintiff is not entitled to injunctive relief as, at a minimum, it has no irreparable injury and it has an adequate remedy at law for AT&T's alleged infringement.

TENTH ADDITIONAL DEFENSE

(License)

44. On information and belief, Plaintiff is precluded from recovering any damages because AT&T is licensed.

ELEVENTH ADDITIONAL 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).

RESERVATION OF RIGHTS

AT&T continues to investigate this matter and reserves the right to amend its Answer, add counterclaims and any additional defenses not presented herein, including, but not limited to those defenses revealed during discovery.

AT&T'S PRAYER FOR RELIEF

WHEREFORE, AT&T respectfully prays for following relief:

1. That this Court declare and decree that AT&T has not infringed, has not willfully infringed, contributed to the infringement of, induced infringement of, and does not infringe any of the claims of '840 Patent and '287 Patent by any product or service of AT&T.
2. That this Court declare and decree that '840 Patent and '287 Patent are invalid.
3. That this Court find that this is an exceptional case under the provisions of 35 U.S.C. § 285 in favor of AT&T, and award AT&T its costs and reasonable attorney's fees incurred as a result of this action; and
4. That AT&T be granted such further relief as the Court deems just and proper.

Respectfully submitted,

Date: August 11, 2010

/s/ David R. Clonts

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ATTORNEYS FOR DEFENDANTS

AT&T INC. AND AT&T MOBILITY LLC

CERTIFICATE OF SERVICE

I certify that on August 11, 2010 all counsel of record were served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ David R. Clonts
DAVID R. CLONTS