

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

WIRELESS RECOGNITION
TECHNOLOGIES LLC,

Plaintiff,

vs.

A9.COM, INC., AMAZON.COM, INC.,
GOOGLE INC., NOKIA, INC., and RICOH
INNOVATIONS, INC.,

Defendants.

Civil No. 2:10-CV-00364-TJW-CE

JURY TRIAL DEMANDED

**DEFENDANT GOOGLE INC.'S ANSWER TO PLAINTIFF'S
COMPLAINT FOR PATENT INFRINGEMENT AND COUNTERCLAIMS**

Defendant Google Inc. ("Google") submits this Answer to the complaint ("Complaint") of Plaintiff Wireless Recognition Technologies LLC ("WRT"). Google denies the allegations and characterizations in WRT's Complaint unless expressly admitted in the following paragraphs:

ANSWER

ALLEGED NATURE OF THE ACTION

1. Google admits that this Complaint purports to be an action for patent infringement.

THE PARTIES

2. The allegations of Paragraph 2 are not directed to Google, and therefore no answer is required. To the extent a response is required, Google is without knowledge or

information sufficient to form a belief as to the truth of the allegations in Paragraph 2 and on that basis denies them.

3. The allegations of Paragraph 3 are not directed to Google, and therefore no answer is required. To the extent a response is required, Google is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3 and on that basis denies them.

4. The allegations of Paragraph 4 are not directed to Google, and therefore no answer is required. To the extent a response is required, Google is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4 and on that basis denies them.

5. Google admits that it is incorporated under the laws of the State of Delaware, has its principal place of business at 1600 Amphitheatre Parkway, Mountain View, California 94043 and may be served through its registered agent for service of process, Corporation Services Company d/b/a/ CSC, 701 Brazos Street, Suite 1050, Austin, Texas 78701.

6. The allegations of Paragraph 6 are not directed to Google, and therefore no answer is required. To the extent a response is required, Google is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6 and on that basis denies them.

7. The allegations of Paragraph 7 are not directed to Google, and therefore no answer is required. To the extent a response is required, Google is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7 and on that basis denies them.

JURISDICTION AND VENUE

8. Google admits that this Court has subject matter jurisdiction over this action.

9. Google admits that venue is proper in the Eastern District of Texas for purposes of this particular action only, but not convenient or in the interests of justice under 28 U.S.C. § 1404(a). Google is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 9 against the other Defendants and on that basis denies them.

10. Google admits that this Court has personal jurisdiction over Google in this particular action only and that Google has conducted and does conduct business within the State of Texas, including within this District. Google admits that it offers for sale, sells, and advertises its products and services within the State of Texas, including within this District. Google denies that it has committed the tort of patent infringement within the State of Texas, including within this District. Google is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 10 against the other Defendants and on that basis denies them.

COUNT ONE

WRT's Allegation of Infringement of the '287 Patent Against A9

11. Google hereby incorporates by reference its responses to Paragraphs 1-8 as if fully set forth herein.

12. Google admits that a purported copy of the '287 patent is attached as Exhibit A to the Complaint and that the '287 patent speaks for itself. The remaining allegations of Paragraph 12 are not directed to Google, and therefore no answer is required. To the extent a response is

required, Google is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and otherwise denies the allegations of Paragraph 12.

13. Google denies the allegations of Paragraph 13 on the grounds that they do not accurately or fully describe the '287 patent.

14. The allegations of Paragraph 14 are not directed to Google, and therefore no answer is required. To the extent a response is required, Google is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14 and on that basis denies them.

15. The allegations of Paragraph 15 are not directed to Google, and therefore no answer is required. To the extent a response is required, Google is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15 and on that basis denies them.

16. The allegations of Paragraph 16 are not directed to Google, and therefore no answer is required. To the extent a response is required, Google is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16 and on that basis denies them.

COUNT TWO

WRT's Allegation of Infringement of the '287 Patent Against Amazon

17. Google hereby incorporates by reference its responses to Paragraphs 1-15 as if fully set forth herein.

18. Google admits that a purported copy of the '287 patent is attached as Exhibit A to the Complaint and that the '287 patent speaks for itself. The remaining allegations of Paragraph 18 are not directed to Google, and therefore no answer is required. To the extent a response is

required, Google is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and otherwise denies the allegations of Paragraph 18.

19. Google denies the allegations of Paragraph 19 on the grounds that they do not accurately or fully describe the '287 patent.

20. The allegations of Paragraph 20 are not directed to Google, and therefore no answer is required. To the extent a response is required, Google is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20 and on that basis denies them.

21. The allegations of Paragraph 21 are not directed to Google, and therefore no answer is required. To the extent a response is required, Google is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 21 and on that basis denies them.

22. The allegations of Paragraph 22 are not directed to Google, and therefore no answer is required. To the extent a response is required, Google is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 22 and on that basis denies them.

COUNT THREE

WRT's Allegation of Infringement of the '287 Patent Against Google

23. Google hereby incorporates by reference its responses to Paragraphs 1-15 as if fully set forth herein.

24. Google admits that a purported copy of the '287 patent is attached as Exhibit A to the Complaint and that the '287 patent speaks for itself, but is without knowledge or information

sufficient to form a belief as to the truth of the remaining allegations and otherwise denies the allegations of Paragraph 24.

25. Google denies the allegations of Paragraph 25 on the grounds that they do not accurately or fully describe the '287 patent.

26. Google admits that it makes software applications that include features referred to by Google as "Google Goggles" and "Google Shopper," and that those features may be available as mobile applications. Google is without knowledge or information sufficient to form a belief as to the truth of any other allegations in Paragraph 26 and on that basis denies them.

27. Google denies the allegations of Paragraph 27.

28. Google denies the allegations of Paragraph 28.

COUNT FOUR

WRT's Allegation of Infringement of the '287 Patent Against Nokia

29. Google hereby incorporates by reference its responses to Paragraphs 1-15 as if fully set forth herein.

30. Google admits that a purported copy of the '287 patent is attached as Exhibit A to the Complaint and that the '287 patent speaks for itself. The remaining allegations of Paragraph 30 are not directed to Google, and therefore no answer is required. To the extent a response is required, Google is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and otherwise denies the allegations of Paragraph 30.

31. Google denies the allegations of Paragraph 31 on the grounds that they do not accurately or fully describe the '287 patent.

32. The allegations of Paragraph 32 are not directed to Google, and therefore no answer is required. To the extent a response is required, Google is without knowledge or

information sufficient to form a belief as to the truth of the allegations in Paragraph 32 and on that basis denies them.

33. The allegations of Paragraph 33 are not directed to Google, and therefore no answer is required. To the extent a response is required, Google is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 33 and on that basis denies them.

34. The allegations of Paragraph 34 are not directed to Google, and therefore no answer is required. To the extent a response is required, Google is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 34 and on that basis denies them.

COUNT FIVE

WRT's Allegation of Infringement of the '287 Patent Against Ricoh

35. Google hereby incorporates by reference its responses to Paragraphs 1-15 as if fully set forth herein.

36. Google admits that a purported copy of the '287 patent is attached as Exhibit A to the Complaint and that the '287 patent speaks for itself. The remaining allegations of Paragraph 36 are not directed to Google, and therefore no answer is required. To the extent a response is required, Google is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and otherwise denies the allegations of Paragraph 36.

37. The allegations of Paragraph 37 are not directed to Google, and therefore no answer is required. To the extent a response is required, Google denies the allegations of Paragraph 37 on the grounds that they do not accurately or fully describe the '287 patent.

38. The allegations of Paragraph 38 are not directed to Google, and therefore no answer is required. To the extent a response is required, Google is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 38 and on that basis denies them.

39. The allegations of Paragraph 39 are not directed to Google, and therefore no answer is required. To the extent a response is required, Google is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 39 and on that basis denies them.

40. The allegations of Paragraph 40 are not directed to Google, and therefore no answer is required. To the extent a response is required, Google is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 40 and on that basis denies them.

Response to WRT's Prayer for Relief

41. Google denies that WRT is entitled to any relief whatsoever in this action from Google as prayed for in the Complaint. Google is without knowledge or information sufficient to form a belief as to the allegations that WRT is entitled to relief from the other Defendants and on that basis denies them.

AFFIRMATIVE DEFENSES

Without admitting any allegations of the Complaint not otherwise admitted, Google asserts the following affirmative defenses to all counts asserted against Google:

FIRST AFFIRMATIVE DEFENSE

42. The claims of the '287 patent are invalid for failure to satisfy one or more of the conditions of patentability, including without limitation those set forth in 35 U.S.C. §§ 101, 102, 103, and/or 112.

SECOND AFFIRMATIVE DEFENSE

43. Google does not make, use, sell, offer for sale, or import into the United States, and has not made, used, sold, offered for sale, or imported into the United States products that infringe any valid claims of the '287 patent, either directly, indirectly, contributorily, or otherwise, and has not induced others to infringe this patent.

THIRD AFFIRMATIVE DEFENSE

44. WRT is barred in whole or in part under principles of equity, including laches, prosecution laches, waiver, estoppel, and/or unclean hands.

FOURTH AFFIRMATIVE DEFENSE

45. On information and belief, WRT lacks standing to assert the '287 patent.

FIFTH AFFIRMATIVE DEFENSE

46. By reason of proceedings in the United States Patent and Trademark Office during the prosecution of the applications that ultimately led to the issuance of the '287 patent, WRT is estopped from asserting that Google infringes or has infringed any claim of the '287 patent.

SIXTH AFFIRMATIVE DEFENSE

47. On information and belief, a reasonable opportunity for discovery is likely to show that products which embody the '287 patent have with WRT's authority been sold or imported into the United States without such products having been marked with the relevant patent number as required by 35 U.S.C. § 287.

SEVENTH AFFIRMATIVE DEFENSE

48. WRT's claim for damages for infringement of the '287 patent should be denied under 35 U.S.C. § 287 with respect to any claim for damages occurring before Google received notice of infringement. Plaintiff is also barred by 35 U.S.C. § 288 from recovering costs associated with this action.

EIGHTH AFFIRMATIVE DEFENSE

49. Any claim by WRT for damages in this patent infringement action is limited by 35 U.S.C. § 286 to damages incurred within six years prior to the filing of the Complaint.

NINTH AFFIRMATIVE DEFENSE

50. WRT's claims for patent infringement are precluded in whole or in part (i) to the extent that any allegedly infringing products are supplied, directly or indirectly, to Google by an entity or entities having express or implied licenses to the '287 patent and/or (ii) under the doctrine of patent exhaustion.

TENTH AFFIRMATIVE DEFENSE

51. To the extent that certain products accused of infringing the '287 Patent are used by the United States Government, WRT's claims are subject to other limitations under 35 U.S.C. § 1498.

ELEVENTH AFFIRMATIVE DEFENSE

52. WRT is not entitled to injunctive relief because any alleged remedy is not immediate or irreparable, because legal remedies are sufficient to compensate WRT for any alleged injury, and because WRT cannot satisfy the requirements for demonstrating the propriety of injunctive relief.

TWELFTH AFFIRMATIVE DEFENSE

53. WRT's Complaint fails to state a claim on which relief can be granted.

THIRTEENTH AFFIRMATIVE DEFENSE

54. Venue in the Eastern District of Texas is not convenient or in the interests of justice under 28 U.S.C. § 1404(a).

COUNTERCLAIMS OF GOOGLE

Google brings the following counterclaims against WRT:

THE PARTIES

55. Google is a Delaware corporation with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, California 94043.

56. WRT alleges in the Complaint that it is a Texas limited liability corporation with its principal place of business in this District.

JURISDICTION AND VENUE

57. This Court has subject matter jurisdiction over Google's counterclaims under 28 U.S.C. §§ 1331, 1338, 2201, and 2202.

58. By filing this proceeding, WRT has consented to personal jurisdiction and venue in the Eastern District of Texas.

BACKGROUND

59. WRT has filed suit alleging that Google infringes or has infringed the '287 patent.

60. Google has denied that it infringes or has infringed any valid claim of the '287 patent. Google also has asserted that the '287 patent is invalid.

61. Based on the foregoing, there is an actual, immediate, and justiciable controversy between Google and WRT as to the validity and infringement of the '287 patent.

COUNT ONE

(Declaratory Judgment – Invalidity of the '287 Patent)

62. Google repeats and realleges Paragraphs 1-61 as if fully set forth herein.

63. The claims of the '287 patent are invalid for failure to satisfy one or more of the conditions of patentability, including without limitation those set forth in 35 U.S.C. §§ 101, 102, 103, and/or 112.

COUNT TWO

(Declaratory Judgment – No Infringement of the ‘287 Patent)

64. Google repeats and realleges Paragraphs 1-63 as if fully set forth herein.

65. The ‘287 patent is not infringed by Google because Google does not make, use, sell, offer for sale, or import into the United States, and has not made, used, sold, offered for sale, or imported into the United States products that infringe any valid claim of the ‘287 patent, either directly, indirectly, contributorily, or otherwise, and have not induced others to infringe the ‘287 patent.

COUNT THREE

(Declaratory Judgment – Unenforceability of the ‘287 Patent)

66. Google repeats and realleges Paragraphs 1-65 as if fully set forth herein.

67. On information and belief, WRT is barred from recovering for any alleged infringement of the ‘287 patent against Google under principles of equity, including laches, prosecution laches, waiver, estoppel, and/or unclean hands.

68. Google has not yet pleaded inequitable conduct as an affirmative defense, nor has it pleaded at this time an affirmative counterclaim based on violation of the antitrust and/or unfair competition laws. If, as Google’s investigation of the relevant facts progresses, it becomes apparent that such affirmative defenses and/or counterclaims exist, Google reserves the right to seek leave to amend its Answer and Counterclaims appropriately.

PRAYER FOR RELIEF

Wherefore, Google requests the following relief:

- (a) that WRT's Complaint be dismissed with prejudice;
- (b) that the '287 patent be declared invalid;
- (c) that Google be declared not to infringe the '287 patent, directly or indirectly;
- (d) that the Court declare this to be an exceptional case and award Google its reasonable costs and attorneys' fees pursuant to 35 U.S.C. § 285; and
- (e) that this Court grant such other and further relief to Google as this Court may deem just and equitable and as this Court deems appropriate and necessary.

DEMAND FOR JURY TRIAL

Google requests a jury trial on all issues triable to a jury.

Respectfully submitted,

Dated: November 11, 2010

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GOOGLE INC.

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record, who are deemed to have consented to electronic service, are being served this 11th day of November, 2010, with a copy of this document via the Court's CM/ECF system.

/s/ Michael C. Smith

Michael C. Smith