

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

VERTICAL COMPUTER SYSTEMS, INC.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. 2:10-CV-490 TJW
	§	
INTERWOVEN, INC., LG ELECTRONICS	§	
MOBILECOMM U.S.A., INC., LG	§	
ELECTRONICS INC., SAMSUNG	§	
ELECTRONICS CO., LTD., SAMSUNG	§	
ELECTRONICS AMERICA, INC.,	§	
	§	
Defendants.	§	
	§	

**DEFENDANTS SAMSUNG ELECTRONICS CO. LTD, AND SAMSUNG
ELECTRONICS AMERICA, INC.’S
ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS**

Defendants Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. (collectively “Samsung”) respond to the Complaint of Plaintiff Vertical Computer Systems, Inc. (“Vertical”) as follows:

PARTIES

1. Samsung lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of the Complaint, and therefore denies them.
2. Paragraph 2 does not require a response by Samsung. To the extent a response is deemed required, Samsung lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of the Complaint, and therefore denies them.

3. Paragraph 3 does not require a response by Samsung. To the extent a response is deemed required, Samsung lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 of the Complaint, and therefore denies them.

4. Paragraph 4 does not require a response by Samsung. To the extent a response is deemed required, Samsung lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the Complaint, and therefore denies them.

5. Samsung denies the allegations contained in Paragraph 5 of the Complaint, except to admit that Samsung Electronics America, Inc. is a New York corporation and has its principal place of business at 85 Challenger Road, Ridgefield Park, NJ 07660.

6. Samsung admits the allegations contained in Paragraph 6 of the Complaint.

JURISDICTION AND VENUE

7. Samsung denies the allegations contained in Paragraph 7 of the Complaint, except to admit that this action purports to state claims of patent infringement that arise under the patent laws of the United States, 35 U.S.C. §§ 101 et seq.

8. Paragraph 8 does not require a response by Samsung. To the extent a response is deemed required, Samsung lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 of the Complaint, and therefore denies them.

9. Paragraph 9 does not require a response by Samsung. To the extent a response is deemed required, Samsung lacks knowledge or information sufficient to form a belief

as to the truth of the allegations contained in Paragraph 9 of the Complaint, and therefore denies them.

10. Samsung denies the allegations of Paragraph 10, except to admit that Vertical alleges that venue is proper in this court under 28 U.S.C. § 1391(b) and (c), and 28 U.S.C. § 1400(b).

PURPORTED PATENT INFRINGEMENT

11. Samsung denies the allegations of Paragraph 11 of the Complaint, except to admit that U.S. Patent No. 6,826,744 (“the ‘744 patent”) states on its face that it is entitled “System and Method for Generating Web Sites in an Arbitrary Object Framework,” and that it was issued on November 30, 2004.

12. Samsung denies the allegations of Paragraph 12 of the Complaint, except to admit that U.S. Patent No. 7,716,629 (“the ‘629 patent”) states on its face that it is entitled “System and Method for Generating Web Sites in an Arbitrary Object Framework,” and that it was issued on May 11, 2010.

13. Samsung lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13 of the Complaint, and therefore denies them.

14. Paragraph 14 does not require a response by Samsung. To the extent a response is deemed required, Samsung lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14 of the Complaint, and therefore denies them.

15. Samsung denies the allegations in Paragraph 15 of the Complaint.

PURPORTED STATUTORY NOTICE

16. Samsung lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 16 of the Complaint, and therefore denies them.

PURPORTED WILLFUL INFRINGEMENT

17. Paragraph 17 does not require a response by Samsung. To the extent a response is deemed required, Samsung lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 17 of the Complaint, and therefore denies them.

18. Paragraph 18 does not require a response by Samsung. To the extent a response is deemed required, Samsung lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 18 of the Complaint, and therefore denies them.

19. Paragraph 19 does not require a response by Samsung. To the extent a response is deemed required, Samsung lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 19 of the Complaint, and therefore denies them.

20. Paragraph 20 does not require a response by Samsung. To the extent a response is deemed required, Samsung lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 20 of the Complaint, and therefore denies them.

PURPORTED RELIEF

21. Samsung denies the allegations of Paragraph 21 of the Complaint concerning Samsung. Samsung lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 21 of the Complaint, and therefore denies them.

22. Samsung denies the allegations of Paragraph 22 of the Complaint concerning Samsung. Samsung lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 22 of the Complaint, and therefore denies them.

JURY DEMAND

23. To the extent that a response is required, Samsung admits that Vertical's Complaint contains a request for a jury trial.

DENIAL OF VERTICAL'S PRAYER FOR RELIEF

24. Samsung requests that the Court deny Vertical all relief requested by Vertical in its Prayer for Relief.

AFFIRMATIVE DEFENSES

25. Samsung asserts the defenses set out below, and expressly reserves the right to amend their Answer with additional defenses.

FIRST AFFIRMATIVE DEFENSE (Failure to State a Claim)

26. Vertical's Complaint fails to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE
(Non-Infringement)**

27. Samsung does not infringe and has not infringed, either directly, indirectly, contributorily, or by inducement, any claim of the '744 or '629 patents (collectively, the "Asserted Patents"), either literally or under the doctrine of equivalents, willfully or otherwise.

**THIRD AFFIRMATIVE DEFENSE
(Invalidity)**

28. The claims of the Asserted Patents are invalid for failure to comply with one or more requirements of the Patent Laws of the United States, 35 U.S.C. § 100 et seq., including without limitation §§ 102, 103 and 112.

**FOURTH AFFIRMATIVE DEFENSE
(Claim Construction Estoppel)**

29. Vertical is estopped from construing the claims of the Asserted Patents to cover any Samsung product because representations, omissions, and/or concessions made during prosecution of the Asserted Patents, and/or related U.S. or foreign patents and patent applications, limit the scope of the claims of the Asserted Patents.

**FIFTH AFFIRMATIVE DEFENSE
(Prosecution History Estoppel)**

30. Prosecution history and/or estoppel bars Vertical from asserting infringement of claims of the Asserted Patents under the Doctrine of Equivalents because of statements and amendments made during prosecution of the Asserted Patents.

**SIXTH AFFIRMATIVE DEFENSE
(Governmental Uses)**

31. Vertical's claims for relief and prayer for damages are limited by 28 U.S.C. § 1498(a).

**SEVENTH AFFIRMATIVE DEFENSE
(Lack of Standing)**

32. On information and belief, Vertical lacks standing to bring this action.

**EIGHTH AFFIRMATIVE DEFENSE
(Laches, Waiver, Acquiescence, Estoppel)**

33. Upon information and belief, laches, waiver, acquiescence, and/or estoppel bar Vertical's remedies under the Asserted Patents.

**NINTH AFFIRMATIVE DEFENSE
(Notice)**

34. Upon information and belief, Vertical's claims for relief and alleged damages and limited by 35 U.S.C. § 287.

**TENTH AFFIRMATIVE DEFENSE
(Inequitable Conduct)**

35. The Asserted Patents are unenforceable due to inequitable conduct as set forth in Paragraphs 51-109 below, which are incorporated by reference as though fully set forth herein.

SAMSUNG'S COUNTERCLAIMS

36. Defendant/Counterclaim-Plaintiff Samsung brings the following counterclaims against Plaintiff/Counterclaim-Defendant Vertical.

PARTIES

37. Samsung Electronics Co., Ltd. is a corporation organized under the laws of the Republic of Korea and has its principal place of business at 1320-10, Seocho 2-dong, Seocho-gu, Seoul 137-857, Republic of Korea.

38. Samsung Electronics America, Inc. is a New York corporation and has its principal place of business at 85 Challenger Road, Ridgefield Park, NJ 07660.

39. Upon information and belief, Vertical is a Delaware corporation with a principal place of business in Richardson, Texas.

JURISDICTION AND VENUE

40. This Court has subject-matter jurisdiction over Samsung's patent counterclaims, which arise under the patent laws of the United States pursuant to 28 U.S.C. §§ 1331, 1338, 2201, and 2202.

41. This Court has personal jurisdiction over Vertical, at least because Vertical purportedly has its primary place of business in this district, and filed its claims for patent infringement in this Court, in response to which these counterclaims are filed.

42. Venue lies in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400. Venue also lies in this district because Vertical has consented to the propriety of venue in this district by filing its claims for patent infringement in this district, in response to which these counterclaims are filed.

COUNT I (DECLARATORY JUDGMENT OF NON-INFRINGEMENT)

43. Samsung realleges and incorporates by reference Paragraphs 36-42 above as though fully set forth herein.

44. An actual and justiciable controversy exists between Samsung and Vertical with respect to the Asserted Patents because Vertical has brought this action against Samsung alleging that Samsung infringes the Asserted Patents, which Samsung denies. Absent a declaration of non-infringement, Vertical will continue to wrongfully assert the Asserted Patents against Samsung, and thereby cause Samsung irreparable injury and damage.

45. Samsung has not infringed, and does not infringe, the Asserted Patents, either directly or indirectly, literally or under the doctrine of equivalents, willfully, or otherwise, and Samsung is entitled to a declaration to that effect.

COUNT II (DECLARATORY JUDGMENT OF INVALIDITY)

46. Samsung realleges and incorporates by reference Paragraphs 36-45 above as though fully set forth herein.

47. An actual and justiciable controversy exists between Samsung and Vertical with respect to the Asserted Patents because Vertical has brought this action against Samsung alleging that the Asserted Patents are valid, which Samsung denies. Absent a declaration of invalidity, Vertical will continue to wrongfully assert the Asserted Patents against Samsung, and thereby cause Samsung irreparable injury and damage.

48. The Asserted Patents are invalid for failure to comply with the requirements of 35 U.S.C. § 100 et seq., including but not limited to, §§ 102, 103, and 112, and Samsung is entitled to a declaration to that effect.

COUNT III (DECLARATORY JUDGMENT OF UNENFORCEABILITY)

49. Samsung realleges and incorporates by reference Paragraphs 36-48 above as though fully set forth herein.

50. An actual and justiciable controversy exists between Samsung and Vertical with respect to the enforceability of the Asserted Patents because Vertical has brought this action against Samsung alleging that the Asserted Patents are enforceable, which allegation Samsung denies. Absent a declaration of unenforceability, Vertical will continue to wrongfully assert the Asserted Patents against Samsung, and thereby cause Samsung irreparable injury and damage.

The '744 Patent

51. The claims of the '744 patent are unenforceable as a result of inequitable conduct before the United States Patent and Trademark Office ("PTO"). One or more of the people substantively involved in the prosecution of the application leading to the '744 patent, including inventor Aubrey McAuley, were aware of information material to the patentability of the '744 patent, but withheld that information from the PTO with the intent to deceive, and made false and misleading statements to the PTO during the prosecution of the '744 patent, as set forth herein.

52. Aubrey McAuley, the named inventor of the '744 patent, was a founder and president of Adhesive Media, Inc. ("Adhesive").

53. On information and belief, Adhesive offered for sale and sold software products and/or services based on its "WebOS" technology more than one year before October 1, 1999, the filing date of the application leading to the '744 patent. Those software products and/or services included Adhesive's "NewsFlash" product, as well as a number of websites that Adhesive designed for particular customers, purportedly using Adhesive's WebOS technology.

54. On information and belief, Adhesive also published information relating to its software products and/or services based on its WebOS technology more than one year before

October 1, 1999. For example, more than one year before October 1, 1999, Adhesive posted on the Internet a diagram of the Web Object Management Facility of its WebOS technology, which is attached hereto as Exhibit A.

55. Exhibit A is nearly identical to Figure 5 of the '744 patent.

56. The specification of the '744 patent describes Figure 5 as an alleged embodiment of "the present invention." *See* '744 patent at 5:3-17.

57. Therefore, Adhesive's commercial offer for sale and sale of products and services based on its WebOS technology, and Adhesive's publication of information relating to its WebOS technology, all of which occurred more than one year before October 1, 1999, constitute material prior art.

58. Upon information and belief, prior to issuance of the '744 patent, Mr. McAuley had knowledge of Adhesive's offer for sale and sale of its WebOS technology and Adhesive's publication of information relating to its WebOS technology.

59. None of the persons involved in the prosecution of the '744 patent, including but not limited to Mr. McAuley, disclosed to the PTO Adhesive's offer for sale or sale of its WebOS technology or the publication of information relating to its WebOS technology.

60. Information regarding Adhesive's offer for sale and sale of WebOS technology, and publications relating thereto, was withheld from the PTO with intent to deceive.

61. This withholding of information material to patentability with intent to deceive the PTO constitutes inequitable conduct, which renders the '744 patent unenforceable.

The '629 Patent

62. The claims of the '629 patent are unenforceable as a result of inequitable conduct before the PTO. On information and belief, one or more of the people substantively

involved in the prosecution of the application leading to the '629 patent, including inventor Aubrey McAuley and patent agent Jack D. Stone Jr., were aware of information material to the patentability of the '629 patent, but withheld that information from the PTO with the intent to deceive, and made false and misleading statements to the PTO during the prosecution of the '629 patent, as set forth herein.

63. During the prosecution of the '629 patent, Vertical initiated a patent infringement suit against Microsoft Corporation in the Eastern District of Texas, Civil Action No. 2:07-CV-144 (“the Microsoft litigation”), alleging infringement of the '744 patent.

64. During the course of the Microsoft litigation, material information regarding the patentability of the '744 patent was disclosed by Microsoft to Vertical and Vertical's attorneys. For example, Microsoft raised inequitable conduct allegations regarding the '744 patent in its Answer to Vertical's complaint, Microsoft served invalidity contentions explaining how numerous prior art references anticipated and/or rendered obvious the claims of the '744 patent, Microsoft produced copies of the underlying prior art references, and Microsoft filed a claim construction brief arguing that numerous claims of the '744 patent were invalid under 35 U.S.C. § 112. However, this material information was not properly disclosed to the PTO during the prosecution of the '629 patent.

65. Because the application leading to the '629 patent is a continuation of the '744 patent, and because the claims and specifications of the '629 and '744 patents are substantially similar, Microsoft's inequitable conduct allegations, invalidity contentions and arguments, and the invalidating prior art references it produced in the Microsoft litigation are also material to the patentability of the '629 patent.

Microsoft's Inequitable Conduct Allegations

66. On July 13, 2007, Microsoft filed its Answer, Affirmative Defenses, and Counterclaims ("Microsoft's Answer") in the Microsoft litigation. Microsoft alleged that the '744 patent was unenforceable due to the inequitable conduct of Mr. McAuley in failing to disclose material information to the PTO. In particular, Microsoft alleged that Mr. McAuley, with intent to deceive, failed to disclose Adhesive's offer for sale and sale of products and services based on Adhesive's WebOS technology, and publications relating thereto, more than one year prior to October 1, 1999.

67. Microsoft's inequitable conduct allegations disclose critical information expressly challenging the validity and enforceability of the related '744 patent.

68. None of the persons involved in the prosecution of the '629 patent, including Mr. McAuley and Mr. Stone, disclosed to the PTO either Microsoft's Answer or the existence or substance of Microsoft's inequitable conduct allegations.

69. Further, during prosecution of the '629 patent, the applicants disclosed certain prior art documents relating to Adhesive's prior art WebOS technology relied on by Microsoft during the Microsoft litigation, but failed to disclose the critical facts that Mr. McAuley was the founder and president of Adhesive and other information indicating that the WebOS technology qualified as prior art under 35 U.S.C. § 102(b).

70. The knowledge that Mr. McAuley is both a named inventor of the '629 patent and the founder and president of Adhesive, as well as the date of the WebOS materials, is essential for the PTO to fully understand the relevance and applicability of Adhesive's prior art WebOS technology.

71. During prosecution of the '629 patent, the applicants selectively disclosed to the PTO only certain information and prior art materials from the Microsoft litigation.

72. The selective disclosure to the PTO of information arising out of the Microsoft litigation demonstrates that Mr. McAuley and Mr. Stone were aware of the Microsoft litigation and the existence of material regarding the patentability of the '629 patent information arising out of that litigation.

73. This selective disclosure to the PTO also demonstrates that Mr. McAuley and Mr. Stone made a deliberate decision to withhold material information from the PTO, and thus demonstrates an intent to deceive.

74. The withholding of information material to patentability with intent to deceive constitutes inequitable conduct, which renders the '629 patent unenforceable.

Microsoft's Invalidity Contentions and Claim Construction Brief

75. On January 18, 2008, Microsoft served its Invalidity Contentions in the Microsoft litigation.

76. Microsoft's Invalidity Contentions identified 58 prior art references that anticipated and/or rendered obvious claims 1-5, 9, 11, 17-19, 21, 23, 25-29, 33, 39-41, 43, 45, and 47-48 of the '744 patent and provided over 50 pages of narrative analysis of how the identified prior art anticipated and/or rendered obvious the asserted claims. The Invalidity Contentions also included over 250 pages of claim charts mapping the prior art references to each limitation of the asserted claims. Further, the Invalidity Contentions include an analysis of the '744 patent's invalidity based on lack of enablement, lack of written description, and indefiniteness.

77. On July 18, 2008, Microsoft served its First Amended Invalidity Contentions in the Microsoft litigation.

78. Microsoft's First Amended Invalidity Contentions added three prior art references to Microsoft's prior Invalidity Contentions, identifying a total of 61 prior art references that anticipated and/or rendered obvious claims 1-5, 9, 11, 17-19, 21, 23, 25-29, 33, 39-41, 43, 45, 47-48, and 53 of the '744 patent. As with the initial Invalidity Contentions, Microsoft First Amended Invalidity Contentions provided over 50 pages of narrative analysis of how the identified prior art anticipated and/or rendered obvious the asserted claims and included over 250 pages of claim charts mapping the prior art references to each limitations of the asserted claims. Further, the First Amended Invalidity Contentions include an analysis of the '744 patent's invalidity based on lack of enablement, lack of written description, and indefiniteness.

79. On June 6, 2008, Microsoft filed its Claim Construction Brief in the Microsoft litigation.

80. Microsoft argued in its Claim Construction Brief that the term "arbitrary object framework" is fatally indefinite.

81. The term "arbitrary object framework" is found in all independent claims of both the '744 and '629 patents, making Microsoft's indefiniteness argument material to the patentability of the '629 patent.

82. Microsoft's Invalidity Contentions, First Amended Invalidity Contentions, and Claim Construction Brief disclose critical information expressly challenging the validity of the related '744 patent, and thus constitute material prior art.

83. None of the persons involved in the prosecution of the '629 patent, including Mr. McAuley and Mr. Stone, disclosed to the PTO Microsoft's Invalidity Contentions, First Amended Invalidity Contentions, or Claim Construction Brief. Further, none of the persons involved in the prosecution of the '629 patent, including Mr. McAuley and Mr. Stone,

disclosed to the PTO the existence of Microsoft's Invalidation Contentions, First Amended Invalidation Contentions, or Claim Construction Brief or the substance of the invalidity arguments set forth therein.

84. Only some prior art references relied on during the Microsoft litigation were selectively disclosed to the PTO during prosecution of the '629 patent.

85. The selective disclosure to the PTO of information arising out of the Microsoft litigation demonstrates that Mr. McAuley and Mr. Stone were aware of the Microsoft litigation and the existence of material information regarding the patentability of the '629 patent arising out of that litigation.

86. This selective disclosure to the PTO also demonstrates that Mr. McAuley and Mr. Stone made a deliberate decision to withhold material information from the PTO, and thus demonstrates an intent to deceive.

87. The withholding of information material to patentability with intent to deceive constitutes inequitable conduct, which renders the '629 patent unenforceable.

Prior Art References Produced by Microsoft

88. In an Information Disclosure Statement, the '629 patent applicants disclosed to the PTO 24 of the 61 prior art references (or excerpts thereof) that were identified by Microsoft in its Invalidation Contentions and First Amended Invalidation Contentions as anticipating and/or rendering obvious certain claims of the '744 patent.

89. On information and belief, none of the persons involved in the prosecution of the '629 patent, including Mr. McAuley and Mr. Stone, disclosed to the PTO any references identified in Microsoft's Invalidation Contentions or First Amended Invalidation Contentions that pertain to the prior art Borland Delphi technology. Specifically, none of the persons involved in

the prosecution of the '629 patent disclosed to the PTO: (i) *Borland Delphi 3 for Windows 95 & Windows NT, User's Guide*, Borland International, Inc. (1997); (ii) *Borland's Official No-Nonsense Guide to Delphi 2*, Sams Publishing (1996); (iii) Osier et al., *Teach Yourself Delphi 3 in 14 Days*, Sams Publishing (1997); (iv) Reisdorph, *Sams Teach Yourself Borland Delphi 4 in 21 Days*, Sams Publishing (1998); (v) Swan, *Delphi 4 Bible*, IDG Books Worldwide, Inc., Tom Swan (1998); (vi) Teixeira et al., *Borland Delphi 4 Developer's Guide*, Sams Publishing (1998).

90. On information and belief, none of the persons involved in the prosecution of the '629 patent, including Mr. McAuley and Mr. Stone, disclosed to the PTO any references identified in Microsoft's Invalidation Contentions or First Amended Invalidation Contentions that pertain to the prior art Microsoft Visual J++ technology. Specifically, none of the persons involved in the prosecution of the '629 patent disclosed to the PTO: (i) Doss, *DCOM Networking with Visual J++ 6.0*, Wordware Publishing, Inc. (1999); (ii) Morgan et. al, *Visual J++ Unleashed*, Sams.net Publishing (1997); (iii) Mulloy, *Using Visual J++ 6*, Que Corporation (1998); (iv) Wood, *Visual J++ 6 Secrets*, IDG Books Worldwide, Inc. (1998).

91. On information and belief, none of the persons involved in the prosecution of the '629 patent, including Mr. McAuley and Mr. Stone, disclosed to the PTO any references identified in Microsoft's Invalidation Contentions or First Amended Invalidation Contentions that pertain to the prior art ASP technology. Specifically, none of the persons involved in the prosecution of the '629 patent disclosed to the PTO: (i) Fedorchek et. al, *ASP: Active Server Pages*, IDG Books Worldwide, Inc. (1997); (ii) Fedorov et. al, *ASP 2.0 Programmer's Reference*, Wrox Press (1998).

92. On information and belief, none of the persons involved in the prosecution of the '629 patent, including Mr. McAuley and Mr. Stone, disclosed to the PTO any references

identified in Microsoft's Invalidation Contentions or First Amended Invalidation Contentions that pertain to the prior art Lotus Notes and Domino 4.5 technology. Specifically, none of the persons involved in the prosecution of the '629 patent disclosed to the PTO: (i) Forlini et. al, *Lotus Notes and Domino 4.5 Professional Reference*, New Riders Publishing (1997); (ii) Krantz, *Building Intranets with Lotus Notes & Domino*, Maximum Press (1997).

93. On information and belief, none of the persons involved in the prosecution of the '629 patent, including Mr. McAuley and Mr. Stone, disclosed to the PTO any references identified in Microsoft's Invalidation Contentions or First Amended Invalidation Contentions that pertain to the prior art Paradox 7 technology. Specifically, none of the persons involved in the prosecution of the '629 patent disclosed to the PTO: (i) Karim et. al, *Paradox 7 Projects for Windows 95*, The Benjamin/Cummings Publishing Company, Inc. (1997); (ii) Weingarten et. al, *Paradox 7 for Windows 95 Illustrated Brief Edition*, CTI (1997).

94. Just as was the case with the 24 prior art references from the Microsoft litigation that the applicants did disclose to the PTO, the narrative and claim charts submitted with Microsoft's Invalidation Contentions and First Amended Invalidation contentions demonstrate how the undisclosed Borland Delphi, Microsoft Visual J++, ASP, Lotus Notes and Domino 4.5, and Paradox 7 prior art references listed in Paragraphs 89-93 above anticipate and/or render obvious the asserted claims in the Microsoft litigation. Therefore, the undisclosed Borland Delphi, Microsoft Visual J++, ASP, Lotus Notes and Domino 4.5, and Paradox 7 prior art references listed in Paragraphs 89-93 above constitute material prior art.

95. The selective disclosure to the PTO of prior art references identified by Microsoft during the Microsoft litigation demonstrates that Mr. McAuley and Mr. Stone were

aware of the Microsoft litigation and the existence of material information regarding the patentability of the '629 patent arising out of that litigation.

96. This selective disclosure to the PTO also demonstrates that Mr. McAuley and Mr. Stone made a deliberate decision to withhold material information from the PTO, and thus demonstrates an intent to deceive.

97. The withholding of information material to patentability with intent to deceive constitutes inequitable conduct, which renders the '629 patent unenforceable.

Prior Art References Disclosed by Interwoven

98. On or about January 12, 2009, Vertical contacted Interwoven, taking the position that the '744 patent contains claims that it believes cover Interwoven's TeamSite Team XM2, TeamSite Server and TeamSite Live Lite Content Publishing Server products (hereinafter "TeamSite prior art").

99. On or about March 5, 2009, Vertical's agent and attorney, Vasilios Dossas and its Chief Technology Officer, Luiz Claudio Valdetaro met with representatives from Interwoven at Interwoven's headquarters in San Jose, California.

100. During this meeting Interwoven presented Mr. Dossas and Mr. Valdetaro with information including claim charts, clearly indicating that the alleged infringing TeamSite prior art has been in use and was on sale prior to October 1, 1998. As such, TeamSite constitutes material prior art under at least 35 U.S.C. § 102(b).

101. On information and belief, Vertical is a company that had approximately 29 employees at the time of its meeting with Interwoven, and Mr. Valdetaro is the highest ranking management-level employee at Vertical primarily responsible for technology, including

the development and monetization of Vertical's intellectual property and represented Vertical in this capacity at the meeting with Interwoven.

102. On information and belief, persons involved in the prosecution of the '629 patent, including Mr. Valdetaro, Mr. McAuley and Mr. Stone, were aware of the existence of material information regarding the patentability of the '629 patent arising out of its discussions with Interwoven, including at least the prior art disclosed by Interwoven at the March 5, 2009 meeting at Interwoven's headquarters.

103. On information and belief, in his position as Chief Technology Officer, Mr. Valdetaro would have known, or should have known, about pending patent applications, especially the '629 application which was a continuation of the '744 patent that he and Mr. Dossas were attempting to license to Interwoven during the March 5, 2009 meeting.

104. On information and belief, by virtue of his position as Vertical's Chief Technology Officer and knowledge of the Interwoven TeamSite prior art, Mr. Valdetaro had a duty to disclose this material prior art to the PTO during the prosecution of the '629 patent.

105. On information and belief, by virtue of his position as Vertical's Chief Technology Officer, if he himself was not the person who should have disclosed the Interwoven TeamSite prior art to the PTO, Mr. Valdetaro would have known the appropriate person at Vertical to whom this information should be disclosed, and had a duty to disclose this relevant information to that person.

106. On information and belief, none of the persons involved in the prosecution of the '629 patent, including Mr. Valdetaro, Mr. McAuley and Mr. Stone, disclosed to the PTO any references identified by Interwoven related to its TeamSite prior art.

107. The TeamSite prior art is material and would have been relevant to the patentability of at least the '629 patent.

108. On information and belief, the TeamSite prior art was withheld from the PTO with the intent to deceive.

109. The withholding of information material to patentability with intent to deceive constitutes inequitable conduct, which renders the '629 patent unenforceable.

PRAYER FOR RELIEF

WHEREFORE, Samsung prays for the following relief:

- A. that the Court dismiss Vertical's Complaint with prejudice;
 - B. that the Court adjudicate that Samsung is not infringing, contributing to, or inducing infringement of, and have not infringed, contributed to, or induced infringement of any of the claims of the Asserted Patents, willingly or otherwise;
 - C. that the Court adjudicate that the claims of the Asserted Patents are invalid and unenforceable;
 - D. that the Court deny Vertical any and all relief it has requested in its Complaint;
 - E. that the Court deny any preliminary or permanent injunctive relief in favor of Vertical and against Samsung;
 - F. that Vertical shall take nothing by way of its Complaint;
 - G. that the Court find that this case is an exceptional case under 35 U.S.C. § 285, and require Vertical to pay costs of suit that Samsung has incurred, including attorneys' fees and costs, pursuant to 35 U.S.C. § 285 and all other applicable statutes, rules, and common law;
- and

H. that the Court grant Samsung costs and such other and further relief to which Samsung is entitled and which the Court deems just and reasonable.

Dated: May 27, 2011

Respectfully submitted,

By: /s/ Eric H. Findlay

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SAMSUNG ELECTRONICS AMERICA, 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 27th day of May 2011, with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ Eric H. Findlay

Eric H. Findlay