

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

VERTICAL COMPUTER SYSTEMS, INC.,

Plaintiff,

v.

LG ELECTRONICS MOBILECOMM U.S.A.,
INC., LG ELECTRONICS INC., SAMSUNG
ELECTRONICS CO., LTD., SAMSUNG
ELECTRONICS AMERICA, INC.,

Defendants.

Civil No. 2:10-CV-00490

JURY TRIAL DEMANDED

**PLAINTIFF'S ANSWER TO DEFENDANTS
SAMSUNG ELECTRONICS CO., LTD. AND
SAMSUNG ELECTRONICS AMERICA, INC.'S COUNTERCLAIMS**

Plaintiff, Vertical Computer Systems, Inc. ("Vertical") answers the counterclaims of Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. (collectively "Samsung") as follows:

Counterclaims

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

Response:

Vertical admits that Samsung purports to bring the following counterclaims against 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.

Response:

Vertical admits the allegations of paragraph 37.

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.

Response:

Vertical admits the allegations of paragraph 38.

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

Response:

Vertical admits the allegations of paragraph 39.

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.

Response:

Vertical admits the allegations of paragraph 40.

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.

Response:

Vertical admits the allegations of paragraph 41.

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.

Response:

Vertical admits the allegations of paragraph 42.

Count I (Declaratory Judgment of Non-Infringement)

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

Response:

Vertical incorporates by reference its responses to paragraphs 36-42 as if 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.

Response:

Vertical admits that an actual and justiciable controversy exists between Samsung and Vertical with respect to the infringement of the asserted patents. Vertical denies all the other allegations of paragraph 44.

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.

Response:

Vertical denies the allegations of paragraph 45.

Count II (Declaratory Judgment of Invalidity)

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

Response:

Vertical incorporates by reference its responses to paragraphs 36-45 as if 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.

Response:

Vertical admits that an actual and justiciable controversy exists between Samsung and Vertical with respect to the validity of the asserted patents. Vertical denies all the other allegations of paragraph 47.

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.

Response:

Vertical denies the allegations of paragraph 48.

Count III (Declaratory Judgment of Unenforceability)

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

Response:

Vertical incorporates by reference its responses to paragraphs 36-48 as if 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.

Response:

Vertical admits that an actual and justiciable controversy exists between Samsung and Vertical with respect to the enforceability of the asserted patents. Vertical denies all the other allegations of paragraph 50.

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.

Response:

Vertical denies the allegations of paragraph 51.

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

Response:

Vertical admits the allegations of paragraph 52.

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.

Response:

"WebOS" is an industry term that describes network services for internet wide distributive computing. To the extent that Adhesive sold or offered for sale software products and/or services that can be described as "WebOS" technology, those goods and/or services were unrelated and totally immaterial to the inventions of the '744 and '629 patents. Otherwise, Vertical denies the allegations of paragraph 53.

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.

Response:

"WebOS" is an industry term that describes network services for internet wide distributive computing. To the extent that Adhesive sold or offered for sale software products and/or services that can be described as "WebOS" technology, those goods and/or services were unrelated and totally immaterial to the inventions of the '744 and '629 patents. Otherwise, Vertical denies the allegations of paragraph 54.

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

Response:

Vertical is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 55, especially with respect to the phrase "nearly identical," and, hence, the allegations as stated are denied.

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.

Response:

The '744 patent, at col. 5, lines 3-17 states the following:

FIG. 5 shows the components of one embodiment of the present invention used to generate web sites. A user with web browser 40 can connect to web server 44 through internet or intranet 42. Web server 44 can access static HTML web documents 46 as well as dynamic HTML documents 52. Dynamic HTML web documents 52 can be created using Web OS Object Manager 50. Dynamic HTML Web document 52 can include document objects 56, shell scripts 58, CGI programs 60, and database queries 62. Document objects 56, shell scripts 58, CGI programs 60, and database queries 62 can be stored in WebOS object library 54. Database queries 62 can result from extracting information from WebOS Information Database 68 and inputting the information into Dynamic HTML Web Template 66.

The '629 patent, at col. 5, lines 3-19 states the following:

FIG. 5 shows the components of one environment of the present invention used to generate web sites. A user with web browser 40 can connect to web server 44 through internet or intranet 42. Web serve 44 can access static HTML web documents 46 as well as dynamic HTML documents 52. Dynamic HTML web documents 52 can be created using WebOS Object Manager 50. Dynamic HTML Web document 52 can include document objects 56, shell scripts 58, CGI programs 60, and database queries 62 can be stored in WebOS object library 54. Database queries 62 can result from extracting information from WebOS Information Database 68 and inputting the information into Dynamic HTML Web Template 66.

Otherwise, Vertical denies the allegations of paragraph 56.

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.

Response:

Vertical denies the allegations of paragraph 57.

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.

Response:

"WebOS" is an industry term that describes network services for internet wide distributive computing. To the extent that adhesive sold or offered for sale products and, or services that can be described as "WebOS" technology and to the extent that Aubrey McAuley had knowledge of any sale or offer for sale of products and/or services were totally unrelated and immaterial to the inventions of the '744 and '629 patents. Otherwise, Vertical denies the allegations of paragraph 58.

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.

Response:

The persons involved in the prosecution of the '744 patent disclosed any and all material prior art of which they had knowledge and satisfied their duty of disclosure. Hence, Vertical denies the allegations of paragraph 59 as stated.

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.

Response:

Vertical denies the allegations of paragraph 60.

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

Response:

Vertical denies the allegations of paragraph 61.

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.

Response:

Vertical denies the allegations of paragraph 62.

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.

Response:

Vertical admits the allegations of paragraph 63.

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.

Response:

Vertical denies the allegations of paragraph 64.

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.

Response:

Vertical denies the allegations of paragraph 65.

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.

Response:

Vertical admits that Microsoft made such allegations. Otherwise, the allegations of paragraph 66 are denied.

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

Response:

Vertical denies the allegations of paragraph 67.

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.

Response:

The persons involved in the prosecution of the '629 patent disclosed any and all material prior art of which they had knowledge and satisfied their duty of disclosure. Hence, Vertical denies the allegations of paragraph 68 as stated.

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).

Response:

"WebOS" is an industry term that describes network services for internet wide distributive computing. To the extent that Adhesive sold or offered for sale software products and/or services that can be described as "WebOS" technology, those goods and/or services were

unrelated and totally immaterial to the inventions of the '629 and '744 patents. Otherwise, Vertical denies the allegations of paragraph 69.

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.

Response:

Vertical denies the allegations of paragraph 70.

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.

Response:

Vertical denies the allegations of paragraph 71.

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.

Response:

Mr. McAuley and Mr. Stone were aware of the Microsoft litigation. Otherwise, Vertical denies the allegations of paragraph 72.

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.

Response:

Vertical denies the allegations of paragraph 73.

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

Response:

Vertical denies the allegations of paragraph 74.

Microsoft's Invalidity Contentions and Claim Construction Brief

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

Response:

Vertical admits the allegations of paragraph 75.

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.

Response:

Vertical denies the allegations of paragraph 76.

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

Response:

Vertical denies the allegations of paragraph 77.

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's 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.

Response:

Vertical denies the allegations of paragraph 78.

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

Response:

Vertical admits the allegations of paragraph 79.

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

Response:

Vertical admits that Microsoft made such an argument. Otherwise, Vertical denies any other allegation of paragraph 80.

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.

Response:

Vertical denies the allegations of paragraph 81.

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

Response:

Vertical denies the allegations of paragraph 82.

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 Invalidation Contentions, First Amended Invalidation 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.

Response:

The persons involved in the prosecution of the '629 patent disclosed any and all material prior art of which they had knowledge and satisfied their duty of disclosure. Hence, the allegations in paragraph 83 as stated are denied.

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

Response:

Vertical denies the allegations of paragraph 84.

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.

Response:

Mr. McAuley and Mr. Stone were aware of the Microsoft litigation. Otherwise, the allegations in paragraph 85 are denied.

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.

Response:

Vertical denies the allegations of paragraph 86.

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

Response:

Vertical denies the allegations of paragraph 87.

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 Invalidity Contentions and First Amended Invalidity Contentions as anticipating and/or rendering obvious certain claims of the '744 patent.

Response:

Vertical denies the allegations of paragraph 88.

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 Invalidity Contentions or First Amended Invalidity 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).

Response:

Vertical denies the allegations of paragraph 89.

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 Invalidity Contentions or First Amended Invalidity 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*, Woodware 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).

Response:

Vertical denies the allegations of paragraph 90.

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 Invalidity Contentions or First Amended Invalidity 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).

Response:

Vertical denies the allegations of paragraph 91.

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 Invalidity Contentions or First Amended Invalidity 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).

Response:

Vertical denies the allegations of paragraph 92.

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 Invalidity Contentions or First Amended Invalidity 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).

Response:

Vertical denies the allegations of paragraph 93.

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.

Response:

Vertical denies the allegations of paragraph 94.

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.

Response:

Mr. McAuley and Mr. Stone were aware of the Microsoft litigation. Otherwise, Vertical denies the allegations in paragraph 95.

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.

Response:

Vertical denies the allegations of paragraph 96.

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

Response:

Vertical denies the allegations of paragraph 97.

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").

Response:

Vertical accused the TeamSite 2006 products and similar products that came after the TeamSite 2006 product. Otherwise, Vertical denies the allegations of paragraph 98.

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.

Response:

Vertical admits the allegations in paragraph 99.

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).

Response:

Vertical denies the allegations of paragraph 100.

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.

Response:

Vertical denies the allegations of paragraph 101.

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.

Response:

Vertical denies the allegations of paragraph 102.

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.

Response:

Vertical admits the allegations of paragraph 103.

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.

Response:

The persons involved in the prosecution of the '629 patent disclosed any and all material prior art of which they had knowledge and satisfied their duty of disclosure. Hence, Vertical denies the allegations as stated in paragraph 104.

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.

Response:

The persons involved in the prosecution of the '629 patent disclosed any and all material prior art of which they had knowledge and satisfied their duty of disclosure. Hence, Vertical denies the allegations as stated in paragraph 105.

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.

Response:

The persons involved in the prosecution of the '629 patent disclosed any and all material prior art of which they had knowledge and satisfied their duty of disclosure. Hence, Vertical denies the allegations as stated in paragraph 106.

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

Response:

Vertical denies the allegations of paragraph 107.

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

Response:

Vertical denies the allegations of paragraph 108.

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

Response:

Vertical denies the allegations of paragraph 109.

RESPONSE TO SAMSUNG'S PRAYER FOR RELIEF

Vertical denies that Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. are entitled to any of the relief requested in their Prayer for Relief.

RESPONSE TO SAMSUNG'S DEMAND FOR JURY TRIAL

No response is necessary.

VERTICAL'S PRAYER FOR RELIEF

In addition to the relief requested in its Complaint, Vertical respectfully requests a judgment against Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc.:

A. That Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. take nothing by their Counterclaims;

B. That the Court award Vertical all costs and attorneys' fees incurred in defending against Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc.'s Counterclaims;
and

C. Any and all further relief that the Court deems just and proper.

WHEREFORE, Vertical asks this Court to enter judgment against Samsung and in favor of Vertical on Samsung's counterclaims. Vertical further requests that it be granted all the relief requested in its Complaint.

JURY DEMAND

Vertical demands trial by jury on all issues properly triable to a jury.

Dated: June 16, 2011

Respectfully submitted,

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*Attorneys for Plaintiff, Vertical Computer
Systems, 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 document was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Fed. R. Civ. P. 5(d) and Local Rule CV-5(d) and (e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by email, on this the 16th day of June, 2011.

/s/ William E. Davis, III
William E. Davis, III