

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

LODSYS, LLC,

Plaintiff,

v.

COMBAY, INC., et al.,

Defendants.

Case No. 2:11-cv-272

PATENT CASE

JURY TRIAL DEMANDED

**ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIMS
OF DEFENDANT QUICKOFFICE, INC.**

Defendant and counterclaim plaintiff Quickoffice, Inc. (“Quickoffice”) submits, pursuant to Fed. R. Civ. P. 8, the following Answer and Affirmative Defenses to the Amended Complaint for Patent Infringement (“Amended Complaint”) filed by Plaintiff Lodsys, LLC (“Lodsys”), and also asserts, pursuant to Fed. R. Civ. P. 13, the following Counterclaims against Lodsys.

ANSWER

Quickoffice responds to the allegations of the Amended Complaint, by corresponding numbered paragraphs, as follows:

The Parties

1. Quickoffice admits that Lodsys purports to be a Texas limited liability company with its principal place of business in Marshall, Texas.
2. Quickoffice is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2, and therefore denies those allegations.
3. Quickoffice is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 3, and therefore denies those allegations.

4. Quickoffice is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4, and therefore denies those allegations.

5. Quickoffice is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 5, and therefore denies those allegations.

6. Quickoffice is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 6, and therefore denies those allegations.

7. Quickoffice is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7, and therefore denies those allegations.

8. Quickoffice admits it is a corporation organized and existing under the laws of the State of Delaware and that it has its principal place of business in Plano, Texas.

9. Quickoffice is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 9, and therefore denies those allegations.

10. Quickoffice is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 10, and therefore denies those allegations.

11. Quickoffice is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 11, and therefore denies those allegations.

12. Quickoffice is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 12, and therefore denies those allegations.

Jurisdiction and Venue

13. Quickoffice admits that this Court has subject matter jurisdiction over this action. Quickoffice admits that venue of this action in this District is provided by 28 U.S.C. §§ 1391 and 1400(b). Further answering, Quickoffice states that venue is proper in other districts pursuant to 28 U.S.C. §§ 1391 and 1400(b), and Quickoffice reserves all rights to move for transfer of venue

of this action, severance, or consolidation with other related actions. Quickoffice denies that it has committed acts of infringement in this District. As to the allegations of Paragraph 13 relating to the other defendants, or the events giving rise to the claims, Quickoffice is without knowledge or information sufficient to form a belief as to the truth of those allegations, and therefore denies those allegations.

14. Quickoffice admits that it is subject to personal jurisdiction in this District. Quickoffice denies that it conducts business utilizing the claimed systems and methods and therefore denies that there is any valid cause of action arising from Quickoffice's business contacts or other activities in the State of Texas or this District. As to the allegations of Paragraph 14 relating to the other defendants, Quickoffice is without knowledge or information sufficient to form a belief as to the truth of those allegations, and therefore denies those allegations.

Answer to Claims of Infringement of U.S. Patent No. 7,620,565 B2

15. Quickoffice admits that United States Patent No. 7,620,565 (the "565 Patent") bears on its face an issue date of November 17, 2009. Quickoffice is without knowledge or information sufficient to form a belief as to the truth of the other allegations of Paragraph 15, and therefore denies those allegations.

16. Quickoffice is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 16, and therefore denies those allegations.

17. Quickoffice is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 17, and therefore denies those allegations.

18. Quickoffice is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 18, and therefore denies those allegations.

19. Quickoffice is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 19, and therefore denies those allegations.

20. Quickoffice is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 20, and therefore denies those allegations.

21. Quickoffice is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 21, and therefore denies those allegations.

22. Quickoffice denies the allegations of Paragraph 22.

23. Quickoffice is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 23, and therefore denies those allegations.

24. Quickoffice is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 24, and therefore denies those allegations.

25. Quickoffice is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 25, and therefore denies those allegations.

26. Quickoffice is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 26, and therefore denies those allegations.

27. Quickoffice denies that it has committed acts of infringement of the '565 Patent, denies that it has caused damage to Lodsys, and denies that Lodsys is entitled to recover damages from Quickoffice. Quickoffice further denies that any acts by Quickoffice will cause irreparable harm to Lodsys and denies that Lodsys is entitled to an injunction. Quickoffice further denies that it has committed willful or deliberate infringement of the '565 Patent and denies that Lodsys is entitled to increased damages or attorneys' fees and costs. As to the other defendants, Quickoffice is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 27, and therefore denies those allegations.

Answer to Claims of Infringement of U.S. Patent No. 7,222,078 B2

28. Quickoffice admits that United States Patent No. 7,222,078 (the “‘078 Patent”) bears on its face an issue date of May 22, 2007. Quickoffice is without knowledge or information sufficient to form a belief as to the truth of the other allegations of Paragraph 28, and therefore denies those allegations.

29. Quickoffice is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 29, and therefore denies those allegations.

30. Quickoffice is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 30, and therefore denies those allegations.

31. Quickoffice is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 31, and therefore denies those allegations.

32. Quickoffice is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 32, and therefore denies those allegations.

33. Quickoffice is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 33, and therefore denies those allegations.

34. Quickoffice is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 34, and therefore denies those allegations.

35. Quickoffice denies the allegations of Paragraph 35.

36. Quickoffice is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 36, and therefore denies those allegations.

37. Quickoffice is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 37, and therefore denies those allegations.

38. Quickoffice is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 38, and therefore denies those allegations.

39. Quickoffice is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 39, and therefore denies those allegations.

40. Quickoffice denies that it has committed acts of infringement of the '078 Patent, denies that it has caused damage to Lodsys, and denies that Lodsys is entitled to recover damages from Quickoffice. Quickoffice further denies that any acts by Quickoffice will cause irreparable harm to Lodsys and denies that Lodsys is entitled to an injunction. Quickoffice further denies that it has committed willful or deliberate infringement of the '565 Patent and denies that Lodsys is entitled to increased damages or attorneys' fees and costs. As to the other defendants, Quickoffice is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 40, and therefore denies those allegations.

Response to Jury Demand

In answer to this unnumbered paragraph, Quickoffice also demands a trial by jury on all issues so triable.

Response to Prayer for Relief

This unnumbered paragraph does not require a response. Quickoffice denies any liability to Lodsys.

AFFIRMATIVE DEFENSES

Pursuant to Fed. R. Civ. P. 8(c), Quickoffice asserts the following affirmative defenses, without admitting that Quickoffice would bear the burden of proof on any of the following:

Failure to State a Claim

1. With respect to any and all allegations against Quickoffice, the Amended Complaint fails to state a claim upon which relief may be granted.

License/Exhaustion of Patent Rights and First Sale

2. Apple, Inc. (“Apple”) is licensed to the ‘565 Patent and the ‘078 Patent (collectively, the “Patents-in-Suit”). Such license permits Apple to offer and otherwise make available to Quickoffice and others products and services that embody the inventions contained in the Patents-in-Suit. Plaintiff’s infringement claims against Quickoffice are based on Quickoffice’s use of products and services that Apple is authorized to provide under such license and which Plaintiff claims embody the Patents-in-Suit. Under the patent law doctrines of exhaustion and first sale, Quickoffice can use the products and services Apple provides to it free of claims of infringing the Patents-in-Suit. Therefore, Plaintiff’s claims against Quickoffice are barred by the license to Apple and the doctrines of patent exhaustion and first sale.

Non-Infringement

3. Quickoffice has not infringed and does not infringe any claims of the ‘565 Patent or the ‘078 Patent.

Invalidity

4. The ‘565 Patent and the ‘078 Patent are invalid for failure to comply with the statutory requirements of one or more of the provisions set forth in the United States Patent Laws, including without limitation 35 U.S.C. §§ 101, 102, 103, 112, 116, 119, 120 and/or 185, and the rules, regulations and laws pertaining thereto.

Prosecution History Estoppel

5. To the extent any of Lodsys's allegations of infringement are construed or are asserted to be allegations of infringement under the doctrine of equivalents, on information and belief, all or some of Lodsys's claims for relief are barred by the doctrine of prosecution history estoppel.

Laches

6. All or some of Lodsys's claims for relief are barred by the doctrine of laches.

Equitable Estoppel

7. All or some of Lodsys's claims for relief are barred by the doctrine of equitable estoppel.

Waiver

8. All or some of Lodsys's claims for relief are barred by the doctrine of waiver.

Unclean Hands

9. Lodsys's claims for relief are barred by the doctrine of unclean hands.

Bad Faith/Exceptional Case

10. Lodsys has brought this suit in bad faith making it an exceptional case, thereby entitling Quickoffice to recover its costs and attorneys' fees pursuant to 35 U.S.C. § 285. Without limitation, (a) Lodsys filed this lawsuit against Quickoffice based on its Quickoffice Connect application for iPhone, with full knowledge that such claims were barred by Apple's license to the Patents-in-Suit; and (b) prior to Lodsys filing suit, Quickoffice provided Lodsys with a detailed written explanation of why Quickoffice's products do not infringe, but Lodsys never responded to Quickoffice and instead filed this suit.

Quickoffice reserves the right to add additional defenses that may be disclosed during discovery or otherwise.

COUNTERCLAIMS

Pursuant to Fed. R. Civ. P. 13, Quickoffice alleges the following Counterclaims against Lodsys:

Parties

1. Counterclaim Plaintiff Quickoffice, Inc. (“Quickoffice”) is a Delaware corporation with a place of business in Plano, Texas.
2. Counterclaim Defendant Lodsys, LLC (“Lodsys”) is, on information and belief, a Texas limited liability company with a place of business in Marshall, Texas.

Jurisdiction and Venue

3. Quickoffice’s Counterclaims arise under the United States Patent Laws, 35 U.S.C. § 1 et seq., and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. This Court has subject matter jurisdiction over Quickoffice’s Counterclaims pursuant to 28 U.S.C. §§ 1331, 1338, 2201 and 2202. This Court has personal jurisdiction over Lodsys at least by virtue of Lodsys’s filing of its original complaint and the Amended Complaint against Quickoffice in this Court, and venue lies in this district pursuant to 28 U.S.C. §§ 1331(c) and 1400(b). (Quickoffice reserves all rights to move for transfer of venue of this action, severance, or consolidation with other related actions.)

4. Lodsys has asserted that Quickoffice infringes the ‘565 Patent and the ‘078 Patent. Actual controversies exist between Lodsys and Quickoffice regarding whether Quickoffice is protected by Apple’s license to the Patents-in-Suit (*see* Paragraph 2 of

Quickoffice's Affirmative Defenses, above), as well as the alleged infringement by Quickoffice, validity and enforceability of the '565 Patent and the '078 Patent.

**COUNT I: Declaratory Judgment that Lodsys's Claims Against Quickoffice
Are Barred by Virtue of Apple's License to the Patents-in-Suit and the
Doctrines of Patent Exhaustion and First Sale**

5. Quickoffice incorporates by reference each preceding allegation as if expressly stated herein.

6. On or about May 31, 2011, Lodsys filed its original complaint against Quickoffice as a defendant. On or about July 21, 2011, Lodsys filed its Amended Complaint against Quickoffice.

7. The Amended Complaint alleges (as did the original complaint) that Quickoffice infringes the '565 Patent and the '078 Patent by making, selling, using, importing and/or offering to sell infringing software, including Quickoffice Connect for iPhone.

8. Apple is licensed to the '565 Patent and the '078 Patent. Such license permits Apple to offer and otherwise make available to Quickoffice and others products and services that embody the inventions contained in the Patents-in-Suit. Lodsys's infringement claims against Quickoffice are based on Quickoffice's use of products and services that Apple is authorized to provide under such license and which Lodsys claims embody the Patents-in-Suit. Under the patent law doctrines of exhaustion and first sale, Quickoffice can use the products and services Apple provides to it free of claims of infringing the Patents-in-Suit.

9. Notwithstanding the Apple license, Lodsys has asserted claims of infringement against Quickoffice. Therefore, an actual and justiciable controversy exists between Quickoffice and Lodsys regarding whether Lodsys's claims against Quickoffice are barred by the license to Apple and the doctrines of patent exhaustion and first sale.

10. Pursuant to 28 U.S.C. §§ 2201 and 2202, Quickoffice is entitled to a declaratory judgment that Lodsys's claims against Quickoffice are barred by the license to Apple and the doctrines of patent exhaustion and first sale.

COUNT II: Declaratory Judgment of Non-Infringement of the '565 Patent

11. Quickoffice incorporates by reference each preceding allegation as though expressly stated herein.

12. Quickoffice has not infringed, contributed to the infringement of, or induced infringement of any valid and enforceable claim of the '565 Patent.

13. An actual controversy exists between Quickoffice and Lodsys regarding Lodsys's allegations of infringement of the '565 Patent.

14. Pursuant to 28 U.S.C. §§ 2201 and 2202, Quickoffice is entitled to a declaratory judgment that it has not infringed, contributed to the infringement of, or induced infringement of any valid and enforceable claim of the '565 Patent.

COUNT III: Declaratory Judgment of Non-Infringement of the '078 Patent

15. Quickoffice incorporates by reference each preceding allegation as though expressly stated herein.

16. Quickoffice has not infringed, contributed to the infringement of, or induced infringement of any valid and enforceable claim of the '078 Patent.

17. An actual controversy exists between Quickoffice and Lodsys regarding Lodsys's allegations of infringement of the '078 Patent.

18. Pursuant to 28 U.S.C. §§ 2201 and 2202, Quickoffice is entitled to a declaratory judgment that it has not infringed, contributed to the infringement of, or induced infringement of any valid and enforceable claim of the '078 Patent.

**COUNT IV: Declaratory Judgment of Invalidity and/or
Unenforceability of the '565 Patent**

19. Quickoffice incorporates by reference each preceding allegation as though expressly stated herein.

20. The claims of the '565 Patent are invalid for failing to comply with the conditions and requirements for patentability as set forth in United States Patent Laws, including without limitation 35 U.S.C. §§ 101, 102, 103, 112, 116, 119, 120 and/or 185, and the rules, regulations, and laws pertaining thereto, and/or are otherwise unenforceable.

21. An actual controversy exists between Quickoffice and Lodsys regarding the validity and enforceability of the '565 Patent.

22. Pursuant to 28 U.S.C. §§ 2201 and 2202, Quickoffice is entitled to a declaratory judgment that the claims of '565 Patent are invalid and/or unenforceable in whole or in part.

**COUNT V: Declaratory Judgment of Invalidity and/or
Unenforceability of the '078 Patent**

23. Quickoffice incorporates by reference each preceding allegation as though expressly stated herein.

24. The claims of the '078 Patent are invalid for failing to comply with the conditions and requirements for patentability as set forth in United States Patent Laws, including without limitation 35 U.S.C. §§ 101, 102, 103, 112, 116, 119, 120 and/or 185, and the rules, regulations, and laws pertaining thereto, and/or are otherwise unenforceable.

25. An actual controversy exists between Quickoffice and Lodsys regarding the validity and enforceability of the '078 Patent.

26. Pursuant to 28 U.S.C. §§ 2201 and 2202, Quickoffice is entitled to a declaratory judgment that the claims of '078 Patent are invalid and/or unenforceable in whole or in part.

DEMAND FOR JURY TRIAL ON QUICKOFFICE'S COUNTERCLAIMS

Quickoffice demands a trial by jury on all issues so triable that are raised by its counterclaims.

REQUESTS FOR RELIEF

Quickoffice respectfully requests the Court enter judgment in its favor and grant the following relief:

- A. Dismiss with prejudice Lodsys's Amended Complaint.
- B. Enter a declaratory judgment that Lodsys's claims against Quickoffice are barred by the license to Apple and the doctrines of patent exhaustion and first sale.
- C. Enter a declaratory judgment that Quickoffice has not infringed and does not presently infringe the '565 Patent.
- D. Enter a declaratory judgment that Quickoffice has not infringed and does not presently infringe the '078 Patent.
- E. Enter a declaratory judgment that the claims of the '565 Patent are invalid and/or unenforceable.
- F. Enter a declaratory judgment that the claims of the '078 Patent are invalid and/or unenforceable.
- G. Find that this is an exceptional case and award Quickoffice its reasonable attorneys' fees and costs, pursuant to 35 U.S.C. § 285.
- H. Award Quickoffice its costs and expenses.
- I. Grant Quickoffice such other relief as this Court deems just.

Dated: August 29, 2011

Respectfully submitted,

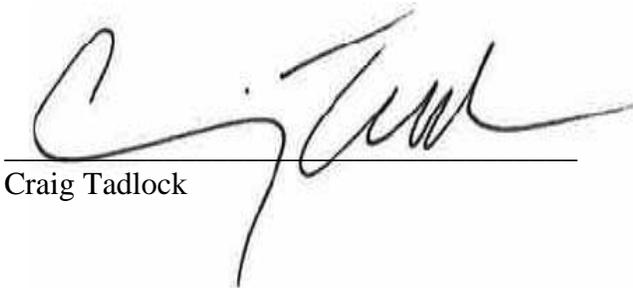


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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served on all counsel of record via the Court's CM/ECF system, on this the 29th day of August, 2011.


Craig Tadlock