

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

EMG TECHNOLOGY, LLC,

Plaintiff,

v.

APPLE, INC.,
AMERICAN AIRLINES, INC.,
BLOOMBERG, L.P.,
UNITED PARCEL SERVICE, INC., &
DELL, INC.,

Defendants.

CASE NO. **6:08-cv-447-LED**

JURY TRIAL DEMANDED

**PLAINTIFF AND COUNTER-DEFENDANT EMG TECHNOLOGY, LLC'S
ANSWER TO APPLE, INC.'S COUNTERCLAIMS IN RESPONSE TO
EMG TECHNOLOGY, LLC'S FOURTH AMENDED COMPLAINT
FOR PATENT INFRINGEMENT**

Pursuant to Federal Rule of Civil Procedure 8(b), EMG Technology, LLC ("EMG") hereby responds as follows to the Counterclaims of Apple, Inc. ("Apple") (Docket No. 130) asserted in response to EMG's Fourth Amended Complaint for Patent Infringement. Except as expressly admitted, EMG generally denies all allegations in Apple's Counterclaims. EMG expressly denies that Apple is entitled to any relief whatsoever in connection with its Counterclaims, including, but not limited to, all relief requested in Apple's the request for Relief in Apple's Counterclaims.

JURISDICTION AND VENUE

1. Responsive to Counterclaim Paragraph 30, EMG admits the allegations contained in Counterclaim Paragraph 30.
2. Responsive to Counterclaim Paragraph 31, EMG admits the allegations contained in Counterclaim Paragraph 31.

3. Responsive to Counterclaim Paragraph 32, EMG admits the allegations contained in Counterclaim Paragraph 32.

4. Responsive to Counterclaim Paragraph 33, EMG admits the allegations contained in Counterclaim Paragraph 33.

FACTS CONCERNING THE ‘196 PATENT

5. Responsive to Counterclaim Paragraph 34, EMG admits that it is the owner by assignment of United States Patent No. 7,441,196 (the “‘196 Patent”), which, on its face, is entitled “Apparatus and Method of Manipulating a Region on a Wireless Device Screen for Viewing, Zooming and Scrolling Internet Content,” filed on March 13, 2006, and issued on October 21, 2008. EMG admits that Elliot A. Gottfurcht, Grant E. Gottfurcht, and Albert-Michel C. Long are the inventors of the ‘196 Patent and that a copy of the ‘196 Patent was attached as Exhibit A to EMG’s Fourth Amended Complaint. Except as expressly admitted, EMG denies the remaining allegations contained in Counterclaim Paragraph 34.

FACTS CONCERNING THE ‘845 PATENT

6. Responsive to Counterclaim Paragraph 35, EMG admits that it is the owner by assignment of United States Patent No. 7,020,845 (the “‘845 Patent”), which, on its face, is entitled “Navigating Internet Content on a Television Using a Simplified Interface and a Remote Control.” filed on March 3, 2000, and issued on March 28, 2006. EMG admits that Elliot A. Gottfurcht, Grant E. Gottfurcht, and Albert-Michel C. Long are the inventors of the ‘845 Patent and that a copy of the ‘845 Patent was attached as Exhibit B to EMG’s Third Amended Complaint. Except as expressly admitted, EMG denies the remaining allegations contained in Counterclaim Paragraph 35.

COUNT ONE - UNITED STATES PATENT NO. 7,441,196
DECLARATION OF NONINFRINGEMENT

7. Responsive to Counterclaim Paragraph 36, EMG incorporates by reference its responses to Counterclaim Paragraphs 30-35 above as though fully set forth herein.

8. Responsive to Counterclaim Paragraph 37, EMG admits that an actual controversy currently exists between EMG and Apple with respect to liability for infringement of the '196 patent, that EMG brought this action against Apple and others alleging that Apple infringes the '196 Patent, and that Apple denies the allegations against it. Except as expressly admitted, EMG denies the remaining allegations contained in Counterclaim Paragraph 37.

9. Responsive to Counterclaim Paragraph 38, EMG denies the allegations contained in Counterclaim Paragraph 38.

10. Responsive to Counterclaim Paragraph 39, EMG denies the allegations contained in Counterclaim Paragraph 39.

COUNT TWO - UNITED STATES PATENT NO. 7,020,845
DECLARATION OF NONINFRINGEMENT

11. Responsive to Counterclaim Paragraph 40, EMG incorporates by reference its responses to Counterclaim Paragraphs 30-39 above as though fully set forth herein.

12. Responsive to Counterclaim Paragraph 41, EMG admits that an actual controversy currently exists between EMG and Apple with respect to infringement of the '845 patent, that EMG brought this action against Apple and others alleging that Apple infringes the '845 Patent, and that Apple denies the allegations against it. Except as expressly admitted, EMG denies the remaining allegations contained in Counterclaim Paragraph 41.

13. Responsive to Counterclaim Paragraph 42, EMG denies the allegations contained in Counterclaim Paragraph 42.

14. Responsive to Counterclaim Paragraph 43, EMG denies the allegations contained in Counterclaim Paragraph 43.

COUNT THREE - UNITED STATES PATENT NO. 7,441,196
DECLARATION OF INVALIDITY

15. Responsive to Counterclaim Paragraph 44, EMG incorporates by reference its responses to Counterclaim Paragraphs 30-43 above as though fully set forth herein.

16. Responsive to Counterclaim Paragraph 45, EMG admits that an actual controversy currently exists between EMG and Apple regarding the validity of the '196 patent,

that EMG brought this action against Apple and others alleging that Apple infringes the '196 Patent, and that Apple denies the allegations against it. Except as expressly admitted, EMG denies the remaining allegations contained in Counterclaim Paragraph 45.

17. Responsive to Counterclaim Paragraph 46, EMG denies the allegations contained in Counterclaim Paragraph 46.

18. Responsive to Counterclaim Paragraph 47, EMG denies the allegations contained in Counterclaim Paragraph 47.

COUNT FOUR - UNITED STATES PATENT NO. 7,020,845
DECLARATION OF INVALIDITY

19. Responsive to Counterclaim Paragraph 48, EMG incorporates by reference its responses to Counterclaim Paragraphs 30-47 above as though fully set forth herein.

20. Responsive to Counterclaim Paragraph 49, EMG admits that an actual controversy currently exists between EMG and Apple regarding the validity of the '845 patent, that EMG brought this action against Apple and others alleging that Apple infringes the '845 Patent, and that Apple denies the allegations against it. Except as expressly admitted, EMG denies the remaining allegations contained in Counterclaim Paragraph 49.

21. Responsive to Counterclaim Paragraph 50, EMG denies the allegations contained in Counterclaim Paragraph 50.

22. Responsive to Counterclaim Paragraph 51, EMG denies the allegations contained in Counterclaim Paragraph 51.

PRAYER FOR RELIEF

WHEREFORE, EMG prays that this Court enter judgment against Apple on Apple's Counterclaims as follows:

(a) Dismissing Apple's Counterclaim with prejudice and ordering that Apple is entitled to no recovery whatsoever on its Counterclaims, including with out limitation all relief sought in Apple's request for relief in its Counterclaims;

(b) Ordering that this is an exceptional case, pursuant to 35 U.S.C. § 285, and awarding EMG its attorney fees and full costs of suit; and

(c) Awarding EMG such other and further relief as this Court deems just and appropriate.

JURY DEMAND

EMG demands a jury trial on all issues in Apple's Counterclaims so triable.

DATED: October 5, 2009

Respectfully Submitted,

OF COUNSEL:

Jeffer, Mangels, Butler and Marmaro, LLP

Stanley M. Gibson
(Cal. Bar No. 162329)
smg@jmbm.com

Joshua S. Hodas, Ph.D.
(Cal. Bar No. 250812)
jsh@jmbm.com

1900 Avenue of the Stars, Seventh Floor
Los Angeles, CA 90067
Telephone: (310) 203-8080
Facsimile: (310) 203-0567

Manatt, Phelps & Phillips, LLP

Robert D. Becker
(Cal. Bar No. 160648)
rbecker@manatt.com

Shawn G. Hansen
(Cal. Bar No. 197033)
shansen@manatt.com

1001 Page Mill Road, Building 2
Palo Alto, CA 94304
Telephone: (650) 812-1300
Facsimile: (650) 213-0260

By: /s/ Charles Ainsworth

Charles Ainsworth
State Bar No. 00783521
Robert Christopher Bunt
State Bar No. 00787165
PARKER, BUNT & AINSWORTH, P.C.
100 E. Ferguson, Suite 1114
Tyler, TX 75702
903/531-3535
903/533-9687
E-mail: charley@pbatyler.com
E-mail: rcbunt@pbatyler.com

ATTORNEYS FOR PLAINTIFF
EMG TECHNOLOGY, LLC

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record, who are deemed to have consented to electronic service are being served this 5th day of October, 2009, with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ Charles Ainsworth

CHARLES AINSWORTH