

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

EMG TECHNOLOGY, LLC,

Plaintiff,

v.

APPLE, INC.,
AMERICAN AIRLINES, INC.,
DELL INC.,
HYATT CORPORATION,
MARRIOTT INTERNATIONAL, INC., &
BARNES & NOBLE, INC.,

Defendants.

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

JURY TRIAL DEMANDED

**PLAINTIFF EMG TECHNOLOGY LLC'S
REPLY TO DEFENDANT AMERICAN AIRLINES, INC.'S ANSWER AND
COUNTERCLAIMS TO FIFTH AMENDED COMPLAINT**

Pursuant to Fed . R. Civ. P. 8(b), EMG Technology, LLC ("EMG") hereby responds to the Counterclaims of American Airlines, Inc. ("American") (Docket No. 174) asserted in response to EMG's Fifth Amended Complaint as follows. Unless specifically admitted, EMG generally denies all allegations in the Counterclaims. EMG expressly denies that American is entitled to any relief whatsoever in connection with its Counterclaims, including, but not limited to, all relief requested in American's Prayer for Relief.

PARTIES

1. Responsive to Counterclaim Paragraph 1, EMG admits the allegations.
2. Responsive to Counterclaim Paragraph 2, EMG admits the allegations.

JURISDICTION AND VENUE

3. Responsive to Counterclaim Paragraph 3, EMG admits the allegations.
4. Responsive to Counterclaim Paragraph 4, EMG admits that it has filed a Complaint against American seeking, *inter alia*, a judgment that American has infringed the

claims of the '196 patent and the '845 patent, and that American has denied those allegations. EMG admits that an actual controversy currently exists between EMG and American regarding the infringement and validity of the '196 patent and the '845 patent. Except as expressly admitted, EMG denies the remaining allegations contained in Counterclaim Paragraph 4.

5. Responsive to Counterclaim Paragraph 5, EMG admits that it is subject to personal jurisdiction in this Court. Except as expressly admitted, EMG denies the remaining allegations.

6. Responsive to Counterclaim Paragraph 6, EMG admits that this Court is a proper venue for this action. Except as expressly admitted, EMG denies the remaining allegations.

COUNTERCLAIM I
DECLARATORY JUDGMENT OF NONINFRINGEMENT OF THE '196 PATENT

7. Responsive to Counterclaim Paragraph 7, EMG incorporates by reference its responses to Counterclaim Paragraphs 1-6 above as though fully set forth herein.

8. Responsive to Counterclaim Paragraph 8, EMG admits that an actual controversy currently exists between EMG and American regarding American's infringement of the '196 patent. Except as expressly admitted, EMG denies the remaining allegations.

9. Responsive to Counterclaim Paragraph 9, EMG denies the allegations.

COUNTERCLAIM II
DECLARATORY JUDGMENT OF NONINFRINGEMENT OF THE '845 PATENT

10. Responsive to Counterclaim Paragraph 10, EMG incorporates by reference its responses to Counterclaim Paragraphs 1-9 above as though fully set forth herein.

11. Responsive to Counterclaim Paragraph 11, EMG admits that an actual controversy currently exists between EMG and American regarding American's infringement of the '845 patent. Except as expressly admitted, EMG denies the remaining allegations.

12. Responsive to Counterclaim Paragraph 12, EMG denies the allegations.

13. Responsive to Counterclaim Paragraph 13, EMG denies the allegations.

COUNTERCLAIM III
DECLARATORY JUDGMENT OF INVALIDITY OF THE ‘196 PATENT

14. Responsive to Counterclaim Paragraph 14, EMG incorporates by reference its responses to Counterclaim Paragraphs 1-13 above as though fully set forth herein.

15. Responsive to Counterclaim Paragraph 15, EMG admits that an actual controversy currently exists between EMG and American regarding the validity of the ‘196 patent. Except as expressly admitted, EMG denies the remaining allegations.

16. Responsive to Counterclaim Paragraph 16, EMG denies the allegations.

COUNTERCLAIM IV
DECLARATORY JUDGMENT OF INVALIDITY OF THE ‘845 PATENT

17. Responsive to Counterclaim Paragraph 17, EMG incorporates by reference its responses to Counterclaim Paragraphs 1-16 above as though fully set forth herein.

18. Responsive to Counterclaim Paragraph 18, EMG admits that an actual controversy currently exists between EMG and American regarding the validity of the ‘845 patent. Except as expressly admitted, EMG denies the remaining allegations.

19. Responsive to Counterclaim Paragraph 19, EMG denies the allegations.

PRAYER FOR RELIEF

WHEREFORE, EMG prays that this Court enter judgment against American as follows:

(a) Dismissing American’s Counterclaim with prejudice and ordering that American is entitled to no recovery on the Counterclaim;

(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

Pursuant to Federal Rule of Civil Procedure 38(b), EMG demands a jury trial on all issues so triable.

Dated: November 25, 2009

Respectfully submitted,

PARKER, BUNT & AINSWORTH, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record, who are deemed to have consented to electronic service, are being served this 25th day of November, 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

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