

**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 APPLE INC.'s COUNTERCLAIMS IN RESPONSE TO
EMG TECHNOLOGY, LLC'S FIFTH 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. 171) asserted in response to EMG's Fifth 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

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

40. Responsive to Counterclaim Paragraph 40, EMG admits the allegations contained in Counterclaim Paragraph 40.

41. Responsive to Counterclaim Paragraph 41, EMG admits the allegations contained in Counterclaim Paragraph 41.

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

FACTS CONCERNING THE ‘196 PATENT

43. Responsive to Counterclaim Paragraph 43, 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 Fifth Amended Complaint. Except as expressly admitted, EMG denies the remaining allegations contained in Counterclaim Paragraph 43.

FACTS CONCERNING THE ‘845 PATENT

44. Responsive to Counterclaim Paragraph 44, 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

45. Responsive to Counterclaim Paragraph 45, EMG incorporates by reference its responses to Counterclaim Paragraphs 39-44 above as though fully set forth herein.

46. Responsive to Counterclaim Paragraph 46, 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 46.

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

48. Responsive to Counterclaim Paragraphs 48-55, EMG denies the allegations.

56. Responsive to Counterclaim Paragraphs 56-61, the paragraphs assert conclusions of law to which no response by EMG is necessary. To the extent that a response by EMG is required, EMG denies the allegations.

61. Responsive to Counterclaim Paragraphs 62-67, EMG denies the allegations.

68. Responsive to Counterclaim Paragraphs 68-69, the paragraphs assert conclusions of law to which no response by EMG is necessary. To the extent that a response by EMG is required, EMG denies the allegations.

70. Responsive to Counterclaim Paragraphs 70-75, EMG denies the allegations.

76. Responsive to Counterclaim Paragraphs 76-77, the paragraphs assert conclusions of law to which no response by EMG is necessary. To the extent that a response by EMG is required, EMG denies the allegations.

78. Responsive to Counterclaim Paragraphs 78-83, EMG denies the allegations.

84. Responsive to Counterclaim Paragraphs 84-85, the paragraphs assert conclusions of law to which no response by EMG is necessary. To the extent that a response by EMG is required, EMG denies the allegations.

86. Responsive to Counterclaim Paragraphs 86-91, EMG denies the allegations.

92. Responsive to Counterclaim Paragraphs 92-93, the paragraphs assert conclusions of law to which no response by EMG is necessary. To the extent that a response by EMG is required, EMG denies the allegations.

94. Responsive to Counterclaim Paragraphs 94-99, EMG denies the allegations.
100. Responsive to Counterclaim Paragraphs 100-101, the paragraphs assert conclusions of law to which no response by EMG is necessary. To the extent that a response by EMG is required, EMG denies the allegations.
102. Responsive to Counterclaim Paragraphs 102-107, EMG denies the allegations.
108. Responsive to Counterclaim Paragraphs 108-109, the paragraphs assert conclusions of law to which no response by EMG is necessary. To the extent that a response by EMG is required, EMG denies them.
110. Responsive to Counterclaim Paragraphs 110-115, EMG denies the allegations.
116. Responsive to Counterclaim Paragraphs 116-117, the paragraphs asserts conclusions of law to which no response by EMG is necessary. To the extent that a response by EMG is required, EMG denies the allegations.
118. Responsive to Counterclaim Paragraphs 118-123, EMG denies the allegations.
124. Responsive to Counterclaim Paragraphs 124-125, the paragraphs assert conclusions of law to which no response by EMG is necessary. To the extent that a response by EMG is required, EMG denies the allegations.
126. Responsive to Counterclaim Paragraphs 126-131, EMG denies the allegations.
132. Responsive to Counterclaim Paragraphs 132-133, the paragraphs assert conclusions of law to which no response by EMG is necessary. To the extent that a response by EMG is required, EMG denies the allegations.
134. Responsive to Counterclaim Paragraphs 134-139, EMG denies the allegations.
140. Responsive to Counterclaim Paragraphs 140-141, the paragraphs assert conclusions of law to which no response by EMG is necessary. To the extent that a response by EMG is required, EMG denies the allegations.
142. Responsive to Counterclaim Paragraphs 142-147, EMG denies the allegations.

148. Responsive to Counterclaim Paragraphs 148-149, the paragraphs assert conclusions of law to which no response by EMG is necessary. To the extent that a response by EMG is required, EMG denies the allegations.

150. Responsive to Counterclaim Paragraphs 150-155, EMG denies the allegations.

156. Responsive to Counterclaim Paragraphs 156-157, the paragraphs assert conclusions of law to which no response by EMG is necessary. To the extent that a response by EMG is required, EMG denies the allegations.

158. Responsive to Counterclaim Paragraphs 158-163, EMG denies the allegations.

164. Responsive to Counterclaim Paragraphs 164-165, the paragraphs assert conclusions of law to which no response by EMG is necessary. To the extent that a response by EMG is required, EMG denies the allegations.

166. Responsive to Counterclaim Paragraphs 166-171, EMG denies the allegations.

172. Responsive to Counterclaim Paragraphs 172-173, the paragraphs assert conclusions of law to which no response by EMG is necessary. To the extent that a response by EMG is required, EMG denies the allegations.

174. Responsive to Counterclaim Paragraphs 174-179, EMG denies the allegations.

180. Responsive to Counterclaim Paragraphs 180-181, the paragraphs assert conclusions of law to which no response by EMG is necessary. To the extent that a response by EMG is required, EMG denies the allegations.

182. Responsive to Counterclaim Paragraphs 182-187, EMG denies the allegations.

188. Responsive to Counterclaim Paragraphs 188-189, the paragraphs assert conclusions of law to which no response by EMG is necessary. To the extent that a response by EMG is required, EMG denies the allegations.

190. Responsive to Counterclaim Paragraphs 190-195, EMG denies the allegations.

196. Responsive to Counterclaim Paragraphs 196-197, the paragraphs assert conclusions of law to which no response by EMG is necessary. To the extent that a response by EMG is required, EMG denies the allegations.

198. Responsive to Counterclaim Paragraphs 198-203, EMG denies the allegations.
204. Responsive to Counterclaim Paragraphs 204-205, the paragraphs assert conclusions of law to which no response by EMG is necessary. To the extent that a response by EMG is required, EMG denies the allegations.
206. Responsive to Counterclaim Paragraphs 206-211, EMG denies the allegations.
212. Responsive to Counterclaim Paragraphs 212-213, the paragraphs assert conclusions of law to which no response by EMG is necessary. To the extent that a response by EMG is required, EMG denies the allegations.
213. Responsive to Counterclaim Paragraphs 214-219, EMG denies the allegations.
220. Responsive to Counterclaim Paragraphs 220-221, the paragraphs assert conclusions of law to which no response by EMG is necessary. To the extent that a response by EMG is required, EMG denies the allegations.
222. Responsive to Counterclaim Paragraphs 222-227, EMG denies the allegations.
228. Responsive to Counterclaim Paragraphs 228-229, the paragraphs assert conclusions of law to which no response by EMG is necessary. To the extent that a response by EMG is required, EMG denies the allegations.
230. Responsive to Counterclaim Paragraphs 230-235, EMG denies the allegations.
236. Responsive to Counterclaim Paragraphs 236-237, the paragraphs assert conclusions of law to which no response by EMG is necessary. To the extent that a response by EMG is required, EMG denies the allegations.
238. Responsive to Counterclaim Paragraphs 238-243, EMG denies the allegations.
244. Responsive to Counterclaim Paragraphs 244-245, the paragraphs assert conclusions of law to which no response by EMG is necessary. To the extent that a response by EMG is required, EMG denies the allegations.
246. Responsive to Counterclaim Paragraphs 246-253, EMG denies the allegations.

254. Responsive to Counterclaim Paragraphs 254-255, the paragraphs assert conclusions of law to which no response by EMG is necessary. To the extent that a response by EMG is required, EMG denies the allegations.

256. Responsive to Counterclaim Paragraphs 256-261, EMG denies the allegations.

262. Responsive to Counterclaim Paragraphs 262-263, the paragraphs assert conclusions of law to which no response by EMG is necessary. To the extent that a response by EMG is required, EMG denies the allegations.

264. Responsive to Counterclaim Paragraphs 264-269, EMG denies the allegations.

270. Responsive to Counterclaim Paragraphs 270-271, the paragraphs assert conclusions of law to which no response by EMG is necessary. To the extent that a response by EMG is required, EMG denies the allegations.

272. Responsive to Counterclaim Paragraphs 272-277, EMG denies the allegations.

278. Responsive to Counterclaim Paragraphs 278-279, the paragraphs assert conclusions of law to which no response by EMG is necessary. To the extent that a response by EMG is required, EMG denies the allegations.

280. Responsive to Counterclaim Paragraphs 280-285, EMG denies the allegations.

286. Responsive to Counterclaim Paragraphs 286-287, the paragraphs assert conclusions of law to which no response by EMG is necessary. To the extent that a response by EMG is required, EMG denies the allegations.

288. Responsive to Counterclaim Paragraphs 288-293, EMG denies the allegations.

294. Responsive to Counterclaim Paragraphs 294-295, the paragraphs assert conclusions of law to which no response by EMG is necessary. To the extent that a response by EMG is required, EMG denies the allegations.

296. Responsive to Counterclaim Paragraphs 296-301, EMG denies the allegations.

302. Responsive to Counterclaim Paragraphs 302-303, the paragraphs assert conclusions of law to which no response by EMG is necessary. To the extent that a response by EMG is required, EMG denies the allegations.

304. Responsive to Counterclaim Paragraphs 304-311, EMG denies the allegations.

312. Responsive to Counterclaim Paragraphs 312-313, the paragraphs assert conclusions of law to which no response by EMG is necessary. To the extent that a response by EMG is required, EMG denies the allegations.

314. Responsive to Counterclaim Paragraphs 314-319, EMG denies the allegations.

320. Responsive to Counterclaim Paragraphs 320-321, the paragraphs assert conclusions of law to which no response by EMG is necessary. To the extent that a response by EMG is required, EMG denies the allegations.

322. Responsive to Counterclaim Paragraphs 322-327, EMG denies the allegations.

328. Responsive to Counterclaim Paragraphs 328-329, the paragraphs assert conclusions of law to which no response by EMG is necessary. To the extent that a response by EMG is required, EMG denies the allegations.

330. Responsive to Counterclaim Paragraphs 330-335, EMG denies the allegations.

336. Responsive to Counterclaim Paragraphs 336-337, the paragraphs assert conclusions of law to which no response by EMG is necessary. To the extent that a response by EMG is required, EMG denies the allegations.

338. Responsive to Counterclaim Paragraphs 338-3443, EMG denies the allegations.

344. Responsive to Counterclaim Paragraphs 344-345, the paragraphs assert conclusions of law to which no response by EMG is necessary. To the extent that a response by EMG is required, EMG denies the allegations.

346. Responsive to Counterclaim Paragraphs 346-347, EMG denies the allegations.

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

348. Responsive to Counterclaim Paragraph 348, EMG incorporates by reference its responses to Counterclaim Paragraphs 39-347 above as though fully set forth herein.

349. Responsive to Counterclaim Paragraph 349, 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 349.

350. Responsive to Counterclaim Paragraph 350, EMG denies the allegations.

351. Responsive to Counterclaim Paragraph 351, lacks knowledge or information sufficient to form a belief as to the truth of the allegations and on that basis denies them.

352. Responsive to Counterclaim Paragraph 352, lacks knowledge or information sufficient to form a belief as to the truth of the allegations and on that basis denies them.

353. Responsive to Counterclaim Paragraph 353, lacks knowledge or information sufficient to form a belief as to the truth of the allegations and on that basis denies them.

354. Responsive to Counterclaim Paragraph 354, EMG denies the allegations.

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

355. Responsive to Counterclaim Paragraph 355, EMG incorporates by reference its responses to Counterclaim Paragraphs 39-354 above as though fully set forth herein.

356. Responsive to Counterclaim Paragraph 356, 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 356.

357. Responsive to Counterclaim Paragraph 357, EMG denies the allegations.

358. Responsive to Counterclaim Paragraph 358, EMG denies the allegations.

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

359. Responsive to Counterclaim Paragraph 359, EMG incorporates by reference its responses to Counterclaim Paragraphs 39-358 above as though fully set forth herein.

360. Responsive to Counterclaim Paragraph 360, 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 360.

361. Responsive to Counterclaim Paragraph 361, EMG denies the allegations.

362. Responsive to Counterclaim Paragraph 362, EMG denies the allegations.

COUNT FIVE – UNITED STATES PATENT NO. 7,441,196
DECLARATION OF UNENFORCEABILITY

363. Responsive to Counterclaim Paragraph 363, EMG incorporates by reference its responses to Counterclaim Paragraphs 39-362 above as though fully set forth herein.

364. Responsive to Counterclaim Paragraph 364, EMG admits that an actual controversy currently exists between EMG and Apple regarding the enforceability 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 364.

365. Responsive to Counterclaim Paragraph 365, EMG denies the allegations.

366. Responsive to Counterclaim Paragraph 366, EMG denies the allegations.

367. Responsive to Counterclaim Paragraph 367, EMG denies the allegations.

COUNT SIX – UNITED STATES PATENT NO. 7,020,845
DECLARATION OF UNENFORCEABILITY

368. Responsive to Counterclaim Paragraph 368, EMG incorporates by reference its responses to Counterclaim Paragraphs 39-367 above as though fully set forth herein.

369. Responsive to Counterclaim Paragraph 369, EMG admits that an actual controversy currently exists between EMG and Apple regarding the enforceability 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 369.

370. Responsive to Counterclaim Paragraph 370, EMG denies the allegations.

371. Responsive to Counterclaim Paragraph 371, EMG denies the allegations.

372. Responsive to Counterclaim Paragraph 372, EMG denies the allegations.

COUNT SEVEN – UNITED STATES PATENT NO. 7,020,845
FALSE MARKING

373. Responsive to Counterclaim Paragraph 373, EMG incorporates by reference its responses to Counterclaim Paragraphs 39-372 above as though fully set forth herein.

374. Responsive to Counterclaim Paragraph 374, EMG denies the allegations.

375. Responsive to Counterclaim Paragraph 375, the paragraph asserts conclusions of law to which no response by EMG is necessary. To the extent that a response by EMG is required, EMG admits that P.R. 3-1(f) of the Rules of Practice for Patent Cases before the Eastern District of Texas speaks for itself. Except as expressly admitted, EMG denies the allegations.

376. Responsive to Counterclaim Paragraph 376, EMG admits the allegations.

377. Responsive to Counterclaim Paragraph 377, EMG admits the allegations.

378. Responsive to Counterclaim Paragraph 378, EMG admits the allegations.

379. Responsive to Counterclaim Paragraph 379, EMG admits the allegations.

380. Responsive to Counterclaim Paragraph 380, EMG denies the allegations.

381. Responsive to Counterclaim Paragraph 381, EMG denies the allegations.

382. Responsive to Counterclaim Paragraph 382, EMG denies the allegations.

383. Responsive to Counterclaim Paragraph 383, EMG denies the allegations.

384. Responsive to Counterclaim Paragraph 384, EMG denies the allegations.

385. Responsive to Counterclaim Paragraph 385, EMG denies the allegations.

386. Responsive to Counterclaim Paragraph 386, EMG denies the allegations.

387. Responsive to Counterclaim Paragraph 387, EMG denies the allegations.

388. Responsive to Counterclaim Paragraph 388, EMG denies the allegations.

389. Responsive to Counterclaim Paragraph 389, EMG denies the allegations.

390. Responsive to Counterclaim Paragraph 390, EMG denies the allegations.

391. Responsive to Counterclaim Paragraph 391, EMG denies the allegations.

392. Responsive to Counterclaim Paragraph 392, EMG denies the allegations.
393. Responsive to Counterclaim Paragraph 393, EMG denies the allegations.
394. Responsive to Counterclaim Paragraph 394, EMG denies the allegations.
395. Responsive to Counterclaim Paragraph 395, EMG denies the allegations.
396. Responsive to Counterclaim Paragraph 396, EMG denies the allegations.
397. Responsive to Counterclaim Paragraph 397, EMG denies the allegations.
398. Responsive to Counterclaim Paragraph 398, EMG denies the allegations.
399. Responsive to Counterclaim Paragraph 399, EMG denies the allegations.
400. Responsive to Counterclaim Paragraph 400, EMG denies the allegations.
401. Responsive to Counterclaim Paragraph 401, EMG denies the allegations.
402. Responsive to Counterclaim Paragraph 402, EMG denies the allegations.
403. Responsive to Counterclaim Paragraph 403, EMG denies the allegations.
404. Responsive to Counterclaim Paragraph 404, EMG denies the allegations.
405. Responsive to Counterclaim Paragraph 405, EMG denies the allegations.
406. Responsive to Counterclaim Paragraph 406, EMG denies the allegations.
407. Responsive to Counterclaim Paragraph 407, EMG denies the allegations.
408. Responsive to Counterclaim Paragraph 408, EMG denies the allegations.
409. Responsive to Counterclaim Paragraph 409, EMG denies the allegations.
410. Responsive to Counterclaim Paragraph 410, EMG denies the allegations.
411. Responsive to Counterclaim Paragraph 411, EMG denies the allegations.
412. Responsive to Counterclaim Paragraph 412, EMG denies the allegations.
413. Responsive to Counterclaim Paragraph 413, EMG denies the allegations.
414. Responsive to Counterclaim Paragraph 414, EMG denies the allegations.
415. Responsive to Counterclaim Paragraph 415, EMG denies the allegations.
416. Responsive to Counterclaim Paragraph 416, EMG denies the allegations.
417. Responsive to Counterclaim Paragraph 417, EMG denies the allegations.
418. Responsive to Counterclaim Paragraph 418, EMG denies the allegations.

419. Responsive to Counterclaim Paragraph 419, EMG denies the allegations.
420. Responsive to Counterclaim Paragraph 420, EMG denies the allegations.
421. Responsive to Counterclaim Paragraph 421, EMG denies the allegations.
422. Responsive to Counterclaim Paragraph 422, EMG denies the allegations.
423. Responsive to Counterclaim Paragraph 423, EMG denies the allegations.
424. Responsive to Counterclaim Paragraph 424, EMG denies the allegations.
425. Responsive to Counterclaim Paragraph 425, EMG denies the allegations.
426. Responsive to Counterclaim Paragraph 426, EMG denies the allegations.
427. Responsive to Counterclaim Paragraph 427, EMG denies the allegations.
428. Responsive to Counterclaim Paragraph 428, EMG denies the allegations.
429. Responsive to Counterclaim Paragraph 429, EMG denies the allegations.
430. Responsive to Counterclaim Paragraph 430, EMG denies the allegations.
431. Responsive to Counterclaim Paragraph 431, EMG denies the allegations.
432. Responsive to Counterclaim Paragraph 432, EMG denies the allegations.
433. Responsive to Counterclaim Paragraph 433, EMG denies the allegations.
434. Responsive to Counterclaim Paragraph 434, EMG denies the allegations.
435. Responsive to Counterclaim Paragraph 435, EMG denies the allegations.
436. Responsive to Counterclaim Paragraph 436, EMG denies the allegations.
437. Responsive to Counterclaim Paragraph 437, EMG denies the allegations.
438. Responsive to Counterclaim Paragraph 438, EMG denies the allegations.
439. Responsive to Counterclaim Paragraph 439, EMG denies the allegations.
440. Responsive to Counterclaim Paragraph 440, EMG denies the allegations.
441. Responsive to Counterclaim Paragraph 441, EMG denies the allegations.
442. Responsive to Counterclaim Paragraph 442, EMG denies the allegations.
443. Responsive to Counterclaim Paragraph 443, EMG denies the allegations.
444. Responsive to Counterclaim Paragraph 444, EMG denies the allegations.
445. Responsive to Counterclaim Paragraph 445, EMG denies the allegations.

- 446. Responsive to Counterclaim Paragraph 446, EMG denies the allegations.
- 447. Responsive to Counterclaim Paragraph 447, EMG denies the allegations.
- 448. Responsive to Counterclaim Paragraph 448, EMG denies the allegations.
- 449. Responsive to Counterclaim Paragraph 449, EMG denies the allegations.
- 450. Responsive to Counterclaim Paragraph 450, EMG denies the allegations.
- 451. Responsive to Counterclaim Paragraph 451, EMG denies the allegations.
- 452. Responsive to Counterclaim Paragraph 452, EMG denies the allegations.
- 453. Responsive to Counterclaim Paragraph 453, EMG denies the allegations.
- 454. Responsive to Counterclaim Paragraph 454, EMG denies the allegations.
- 455. Responsive to Counterclaim Paragraph, 455, EMG denies the allegations.

COUNT EIGHT – UNITED STATES PATENT NO. 7,441,196
FALSE MARKING

456. Responsive to Counterclaim Paragraph 456, EMG incorporates by reference its responses to Counterclaim Paragraphs 39-455 above as though fully set forth herein.

- 457. Responsive to Counterclaim Paragraph 457, EMG denies the allegations.
- 458. Responsive to Counterclaim Paragraph 458, EMG admits the allegations.
- 459. Responsive to Counterclaim Paragraph 459, EMG denies the allegations.
- 460. Responsive to Counterclaim Paragraph 460, EMG denies the allegations.
- 461. Responsive to Counterclaim Paragraph 461, EMG denies the allegations.
- 462. Responsive to Counterclaim Paragraph 462, EMG denies the allegations.
- 463. Responsive to Counterclaim Paragraph 463, EMG denies the allegations.
- 464. Responsive to Counterclaim Paragraph 464, EMG denies the allegations.
- 465. Responsive to Counterclaim Paragraph 465, EMG denies the allegations.
- 466. Responsive to Counterclaim Paragraph 466, EMG denies the allegations.
- 467. Responsive to Counterclaim Paragraph 467, EMG denies the allegations.
- 468. Responsive to Counterclaim Paragraph 468, EMG denies the allegations.
- 469. Responsive to Counterclaim Paragraph 469, EMG denies the allegations.

470. Responsive to Counterclaim Paragraph 470, EMG denies the allegations.
471. Responsive to Counterclaim Paragraph 471, EMG denies the allegations.
472. Responsive to Counterclaim Paragraph 472, EMG denies the allegations.
473. Responsive to Counterclaim Paragraph 473, EMG denies the allegations.
474. Responsive to Counterclaim Paragraph 474, EMG denies the allegations.
475. Responsive to Counterclaim Paragraph 475, EMG denies the allegations.
476. Responsive to Counterclaim Paragraph 476, EMG denies the allegations.
477. Responsive to Counterclaim Paragraph 477, EMG denies the allegations.
478. Responsive to Counterclaim Paragraph 478, EMG denies the allegations.
479. Responsive to Counterclaim Paragraph 479, EMG denies the allegations.
480. Responsive to Counterclaim Paragraph 480, EMG denies the allegations.
481. Responsive to Counterclaim Paragraph 481, EMG denies the allegations.
482. Responsive to Counterclaim Paragraph 482, EMG denies the allegations.
483. Responsive to Counterclaim Paragraph 483, EMG denies the allegations.
484. Responsive to Counterclaim Paragraph 484, EMG denies the allegations.
485. Responsive to Counterclaim Paragraph 485, EMG denies the allegations.
486. Responsive to Counterclaim Paragraph 486, EMG denies the allegations.
487. Responsive to Counterclaim Paragraph 487, EMG denies the allegations.
488. Responsive to Counterclaim Paragraph 488, EMG denies the allegations.
489. Responsive to Counterclaim Paragraph 489, EMG denies the allegations.
490. Responsive to Counterclaim Paragraph 490, EMG denies the allegations.
491. Responsive to Counterclaim Paragraph 491, EMG denies the allegations.
492. Responsive to Counterclaim Paragraph 492, EMG denies the allegations.
493. Responsive to Counterclaim Paragraph 493, EMG denies the allegations.
494. Responsive to Counterclaim Paragraph 494, EMG denies the allegations.
495. Responsive to Counterclaim Paragraph 495, EMG denies the allegations.
496. Responsive to Counterclaim Paragraph 496, EMG denies the allegations.

497. Responsive to Counterclaim Paragraph 497, EMG denies the allegations.
498. Responsive to Counterclaim Paragraph 498, EMG denies the allegations.
499. Responsive to Counterclaim Paragraph 499, EMG denies the allegations.
500. Responsive to Counterclaim Paragraph 500, EMG denies the allegations.
501. Responsive to Counterclaim Paragraph 501, EMG denies the allegations.
502. Responsive to Counterclaim Paragraph 502, EMG denies the allegations.
503. Responsive to Counterclaim Paragraph 503, EMG denies the allegations.
504. Responsive to Counterclaim Paragraph 504, EMG denies the allegations.
505. Responsive to Counterclaim Paragraph 505, EMG denies the allegations.
506. Responsive to Counterclaim Paragraph 506, EMG denies the allegations.
507. Responsive to Counterclaim Paragraph 507, EMG denies the allegations.
508. Responsive to Counterclaim Paragraph 508, EMG denies the allegations.
509. Responsive to Counterclaim Paragraph 509, EMG denies the allegations.
510. Responsive to Counterclaim Paragraph 510, EMG denies the allegations.
511. Responsive to Counterclaim Paragraph 511, EMG denies the allegations.
512. Responsive to Counterclaim Paragraph 512, EMG denies the allegations.
513. Responsive to Counterclaim Paragraph 513, EMG denies the allegations.
514. Responsive to Counterclaim Paragraph 514, EMG denies the allegations.
515. Responsive to Counterclaim Paragraph 515, EMG denies the allegations.
516. Responsive to Counterclaim Paragraph 516, EMG denies the allegations.
517. Responsive to Counterclaim Paragraph 517, EMG denies the allegations.
518. Responsive to Counterclaim Paragraph 518, EMG denies the allegations.
519. Responsive to Counterclaim Paragraph 519, EMG denies the allegations.
520. Responsive to Counterclaim Paragraph 520, EMG denies the allegations.
521. Responsive to Counterclaim Paragraph 521, EMG denies the allegations.
522. Responsive to Counterclaim Paragraph 522, EMG denies the allegations.
523. Responsive to Counterclaim Paragraph 523, EMG denies the allegations.

524. Responsive to Counterclaim Paragraph 524, EMG denies the allegations.
525. Responsive to Counterclaim Paragraph 525, EMG denies the allegations.
526. Responsive to Counterclaim Paragraph 526, EMG denies the allegations.
527. Responsive to Counterclaim Paragraph 527, EMG denies the allegations.
528. Responsive to Counterclaim Paragraph 528, EMG denies the allegations.
529. Responsive to Counterclaim Paragraph 529, EMG denies the allegations.
530. Responsive to Counterclaim Paragraph 530, EMG denies the allegations.
531. Responsive to Counterclaim Paragraph 531, EMG denies the allegations.
532. Responsive to Counterclaim Paragraph 532, EMG denies the allegations.
533. Responsive to Counterclaim Paragraph 533, EMG denies the allegations.
534. Responsive to Counterclaim Paragraph 534, EMG denies the allegations.
535. Responsive to Counterclaim Paragraph 535, EMG denies the allegations.
536. Responsive to Counterclaim Paragraph 536, EMG denies the allegations.
537. Responsive to Counterclaim Paragraph 537, EMG denies the allegations.
538. Responsive to Counterclaim Paragraph 538, EMG denies the allegations.
539. Responsive to Counterclaim Paragraph 539, EMG denies the allegations.
540. Responsive to Counterclaim Paragraph 540, EMG denies the allegations.
541. Responsive to Counterclaim Paragraph 541, EMG denies the allegations.
542. Responsive to Counterclaim Paragraph 542, EMG denies the allegations.
543. Responsive to Counterclaim Paragraph 543, EMG denies the allegations.
544. Responsive to Counterclaim Paragraph 544, EMG denies the allegations.
545. Responsive to Counterclaim Paragraph 545, EMG denies the allegations.
546. Responsive to Counterclaim Paragraph 546, EMG denies the allegations.
547. Responsive to Counterclaim Paragraph 547, EMG denies the allegations.
548. Responsive to Counterclaim Paragraph 548, EMG denies the allegations.
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556. Responsive to Counterclaim Paragraph 556, EMG denies the allegations.
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558. Responsive to Counterclaim Paragraph 558, EMG denies the allegations.
559. Responsive to Counterclaim Paragraph 559, EMG denies the allegations.
560. Responsive to Counterclaim Paragraph 560, EMG denies the allegations.
561. Responsive to Counterclaim Paragraph 561, EMG denies the allegations.
562. Responsive to Counterclaim Paragraph 562, EMG denies the allegations.
563. Responsive to Counterclaim Paragraph 563, EMG denies the allegations.
564. Responsive to Counterclaim Paragraph 564, EMG denies the allegations.
565. Responsive to Counterclaim Paragraph 565, EMG denies the allegations.
566. Responsive to Counterclaim Paragraph 566, EMG denies the allegations.
567. Responsive to Counterclaim Paragraph 567, EMG denies the allegations.
568. Responsive to Counterclaim Paragraph 568, EMG denies the allegations.
569. Responsive to Counterclaim Paragraph 569, EMG denies the allegations.
570. Responsive to Counterclaim Paragraph 570, EMG denies the allegations.
571. Responsive to Counterclaim Paragraph 571, EMG denies the allegations.
572. Responsive to Counterclaim Paragraph 572, EMG denies the allegations.
573. Responsive to Counterclaim Paragraph 573, EMG denies the allegations.
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578. Responsive to Counterclaim Paragraph 578, EMG denies the allegations.
579. Responsive to Counterclaim Paragraph 579, EMG denies the allegations.
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581. Responsive to Counterclaim Paragraph 581, EMG denies the allegations.
582. Responsive to Counterclaim Paragraph 582, EMG denies the allegations.
583. Responsive to Counterclaim Paragraph 583, EMG denies the allegations.
584. Responsive to Counterclaim Paragraph 584, EMG denies the allegations.
585. Responsive to Counterclaim Paragraph 585, EMG denies the allegations.
586. Responsive to Counterclaim Paragraph 586, EMG denies the allegations.
587. Responsive to Counterclaim Paragraph 587, EMG denies the allegations.
588. Responsive to Counterclaim Paragraph 588, EMG denies the allegations.
589. Responsive to Counterclaim Paragraph 589, EMG denies the allegations.
590. Responsive to Counterclaim Paragraph 590, EMG denies the allegations.
591. Responsive to Counterclaim Paragraph 591, EMG denies the allegations.
592. Responsive to Counterclaim Paragraph 592, EMG denies the allegations.
593. Responsive to Counterclaim Paragraph 593, EMG denies the allegations.
594. Responsive to Counterclaim Paragraph 594, EMG denies the allegations.
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596. Responsive to Counterclaim Paragraph 596, EMG denies the allegations.
597. Responsive to Counterclaim Paragraph 597, EMG denies the allegations.
598. Responsive to Counterclaim Paragraph 598, EMG denies the allegations.
599. Responsive to Counterclaim Paragraph 599, EMG denies the allegations.
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602. Responsive to Counterclaim Paragraph 602, EMG denies the allegations.
603. Responsive to Counterclaim Paragraph 603, EMG denies the allegations.
604. Responsive to Counterclaim Paragraph 604, EMG denies the allegations.

- 605. Responsive to Counterclaim Paragraph 605, EMG denies the allegations.
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- 610. Responsive to Counterclaim Paragraph 610, EMG denies the allegations.
- 611. Responsive to Counterclaim Paragraph 611, EMG denies the allegations.
- 612. Responsive to Counterclaim Paragraph 612, EMG denies the allegations.
- 613. Responsive to Counterclaim Paragraph 453, EMG denies the allegations.
- 614. Responsive to Counterclaim Paragraph 614, EMG denies the allegations.

GENERAL DENIAL

Except as expressly admitted herein, EMG denies the allegations of Apple's Counterclaims.

RESPONSE TO APPLE'S PRAYER FOR RELIEF

EMG 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 request for relief, paragraphs a-l.

EMG'S AFFIRMATIVE DEFENSES TO APPLE'S COUNTERCLAIMS

EMG asserts the following affirmative defenses to Apple's Counterclaims:

First Affirmative Defense (Failure to State a Claim)

615. The Counterclaims fail to state a claim upon which relief may be granted against EMG.

Second Affirmative Defense (Laches)

616. The claims asserted in the Counterclaims are barred by the doctrine of laches.

Third Affirmative Defense (Waiver)

617. The claims asserted in the Counterclaims are barred by the doctrine of waiver.

Fourth Affirmative Defense (Estoppel)

618. The claims asserted in the Counterclaims are barred by the doctrine of estoppel.

619. EMG reserves the rights to assert any other defenses to Apple's Counterclaims that discovery may reveal.

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, paragraphs a.-1.;

(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 so triable.

Dated: November 27, 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 27th 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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