

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.,
CONTINENTAL AIRLINES, INC.,
UNITED PARCEL SERVICE, INC.,

Defendants.

CASE NO. 6:08-CV-00447-LED

JURY TRIAL DEMANDED

**PLAINTIFF AND COUNTERDEFENDANT EMG TECHNOLOGY LLC'S
ANSWER TO COUNTERCLAIM OF APPLE, INC.**

Pursuant to Fed . R. Civ. P. 8(b), EMG Technology, LLC ("EMG") hereby responds to the Counterclaim of Apple, Inc. ("Apple") as follows. Unless specifically admitted, EMG generally denies all allegations in the Counterclaim. EMG expressly denies that Apple is entitled to any relief whatsoever in connection with its Counterclaim, including, but not limited to, all relief requested in Apple's Prayer for Relief.

JURISDICTION AND VENUE

31. EMG admits the allegations contained in Paragraph 31.
32. EMG admits the allegations contained in Paragraph 32.
33. EMG admits the allegations contained in Paragraph 33.
34. EMG admits the allegations contained in Paragraph 34.

FACTS CONCERNING THE '196 PATENT

35. 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 Second Amended Complaint. Except as expressly admitted, EMG denies the remaining allegations contained in Paragraph 35.

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

DECLARATION OF NONINFRINGEMENT

36. EMG incorporates by reference its responses to Paragraphs 31-35 above as though fully set forth herein.

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

38. EMG denies the allegations contained in Paragraph 38.

39. EMG denies the allegations contained in Paragraph 39.

COUNT TWO - UNITED STATES PATENT NO. 7,441,196

DECLARATION OF INVALIDITY

40. EMG incorporates by reference its responses to Paragraphs 31-39 above as though fully set forth herein.

41. EMG admits that an actual controversy currently exists between EMG and Apple regarding the validity of the '196 patent and that EMG brought this action against Apple and others alleging that Apple infringes the '196 Patent and that Apple denies that allegation. Except as expressly admitted, EMG denies the remaining allegations contained in Paragraph 41.

42. EMG denies the allegations contained in Paragraph 42.

43. EMG denies the allegations contained in Paragraph 43.

PRAYER FOR RELIEF

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

- (a) Dismissing Apple's Counterclaim with prejudice and ordering that Apple 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.

DATED: April 22, 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

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

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

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record, who are deemed to have consented to electronic service are being served this 22th day of April, 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