

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

Bedrock Computer Technologies LLC,

Plaintiff,

v.

Softlayer Technologies, Inc.,
CitiWare Technology Solutions, LLC,
Google Inc.,
Yahoo! Inc.,
Myspace Inc.,
Amazon.com Inc.,
PayPal Inc.,
Match.com Inc.,
AOL Inc., and
CME Group Inc.,

Defendants.

Case No. 6:09-CV-269-LED

JURY TRIAL DEMANDED

**DEFENDANT AOL INC.'S ANSWER TO BEDROCK'S THIRD AMENDED
COMPLAINT, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND JURY
DEMAND**

Defendant AOL Inc. ("AOL") answers plaintiff Bedrock Computer Technologies LLC's ("Bedrock") Third Amended Complaint for Patent Infringement¹ ("Third Amended Complaint") as follows:

PARTIES

1. AOL lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 1, and therefore denies them.

2. The allegations of paragraph 2 are not directed to AOL, and therefore no answer is required. To the extent a response is required, AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2, and therefore denies

¹ Although Bedrock titled its complaint "First Amended Complaint," it is actually Bedrock's Third Amended Complaint.

them.

3. The allegations of paragraph 3 are not directed to AOL, and therefore no answer is required. To the extent a response is required, AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3, and therefore denies them.

4. The allegations of paragraph 4 are not directed to AOL, and therefore no answer is required. To the extent a response is required, AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4, and therefore denies them.

5. The allegations of paragraph 5 are not directed to AOL, and therefore no answer is required. To the extent a response is required, AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5, and therefore denies them.

6. The allegations of paragraph 6 are not directed to AOL, and therefore no answer is required. To the extent a response is required, AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6, and therefore denies them.

7. The allegations of paragraph 7 are not directed to AOL, and therefore no answer is required. To the extent a response is required, AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7, and therefore denies them.

8. The allegations of paragraph 8 are not directed to AOL, and therefore no answer is required. To the extent a response is required, AOL is without knowledge or information

sufficient to form a belief as to the truth of the allegations of paragraph 8, and therefore denies them.

9. The allegations of paragraph 9 are not directed to AOL, and therefore no answer is required. To the extent a response is required, AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 9, and therefore denies them.

10. AOL admits that it is a corporation organized under the laws of the state of Delaware with its principle place of business at 770 Broadway, New York, New York 10003. AOL denies that it is infringing or has infringed any valid and enforceable patent claim and that Bedrock is entitled to any relief therefrom. AOL denies all remaining allegations of paragraph 10.

11. The allegations of paragraph 11 are not directed to AOL, and therefore no answer is required. To the extent a response is required, AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 9, and therefore denies them.

JURISDICTION AND VENUE

12. AOL admits that the Third Amended Complaint purports to constitute an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code, including 35 U.S.C. §§ 271 and 281-285 and that the Court has jurisdiction over patent actions pursuant to 28 U.S.C. §§ 1331 and 1338(a). Consistent with the denial of the allegations of paragraph 15 below, on information and belief, AOL denies that Bedrock has standing, and accordingly denies that this Court has subject matter jurisdiction over Bedrock's patent claims in this particular case.

13. To the extent the allegations in paragraph 13 relate to AOL, AOL admits that the

Third Amended Complaint purports to assert that venue is proper in the Tyler Division of the Eastern District of Texas pursuant to 28 U.S.C. § 1391 and 28 U.S.C. § 1400(b).

14. AOL admits that it operates a website that can be accessed by individuals residing in the State of Texas. As to the remaining Defendants, AOL is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 14 of the Third Amended Complaint, and on that basis denies them. AOL denies the remaining allegations contained in paragraph 14 of the Third Amended Complaint.

GENERAL ALLEGATIONS

15. AOL admits that U.S. Patent No. 5,893,120 (the “120 Patent”) is entitled “Methods and Apparatus for Information Storage and Retrieval Using a Hashing Technique with External Chaining and On-the-Fly Removal of Expired Data.” AOL is without knowledge or information sufficient to form a belief as to whether Bedrock holds all right, title, and interest in and to the ’120 Patent and therefore denies those allegations. AOL admits that a document that purports to be a true and correct copy of the ’120 Patent is attached to Bedrock’s Third Amended Complaint as Exhibit A. AOL denies any remaining allegations of paragraph 15.

16. AOL denies the allegations contained in paragraph 16 of the Third Amended Complaint. To the extent the allegations of paragraph 16 are directed to other defendants, AOL lacks sufficient information to admit or deny the allegations and therefore denies them.

17. AOL denies that the ’120 Patent is valid and enforceable.

18. AOL denies the allegations contained in paragraph 18 of the Third Amended Complaint. To the extent the allegations of paragraph 17 are directed to other defendants, AOL lacks sufficient information to admit or deny the allegations and therefore denies them.

19. AOL denies that it is infringing or has infringed any valid and enforceable patent claim and that Bedrock is entitled to any relief therefrom. To the extent the allegations of

paragraph 19 are directed to other defendants, AOL lacks sufficient information to admit or deny the allegations and therefore denies them. AOL denies the remaining allegations contained in paragraph 19 of the Third Amended Complaint.

20. AOL admits that it was made aware of the '120 Patent on or after commencement of this action on June 16, 2009. AOL denies that it is infringing or has infringed any valid and/or enforceable patent claim and that Bedrock is entitled to any relief therefrom. AOL therefore denies that it has engaged in any willful infringement of the '120 Patent. To the extent the allegations of paragraph 20 are directed to other defendants, AOL lacks sufficient information to admit or deny the allegations and therefore denies them. AOL denies the remaining allegations contained in paragraph 20 of the Third Amended Complaint.

21. AOL admits that an *ex parte* reexamination of the '120 Patent was filed with the USPTO on February 9, 2010. AOL denies the remaining allegations contained in paragraph 21 of the Third Amended Complaint.

22. AOL admits that an amendment to certain original claims of the '120 Patent was filed with the USPTO on November 23, 2010. AOL denies that these amendments were merely "clarifying" the claims. AOL admits that the amendments changed claims 3, 4, 7 and 8. AOL admits that claim 3 is an independent claim and denies that claim 4 is an independent claim. AOL denies that claim 7 is a dependent claim and admits that claim 8 is a dependent claim. AOL admits that the language in claims 1, 2, 5, and 6 were unchanged by the amendments. AOL denies the remaining allegations contained in paragraph 22 of the Third Amended Complaint.

23. AOL admits that on January 14, 2011 the USPTO issued a Notice of Intent to Issue Ex Parte Reexamination Certificate, indicating an intent to allow the amendments to the '120 Patent. AOL denies that this Notice confirms that the '120 Patent is valid. AOL denies that

the legal scope of the claims of the '120 Patent is unchanged. AOL admits that a document that purports to be a true and correct copy of the Notice of Intent to Issue Ex Parte Reexamination Certificate is attached to the Third Amended Complaint as Exhibit B. AOL denies the remaining allegations contained in paragraph 23 of the Third Amended Complaint.

24. AOL denies that the '120 Patent is valid. AOL denies that it is infringing or has infringed any valid and enforceable patent claim and that Bedrock is entitled to any relief therefrom. AOL therefore denies that it has engaged in any willful infringement of the '120 Patent. To the extent the allegations of paragraph 22² are directed to other defendants, AOL lacks sufficient information to admit or deny the allegations and therefore denies them. AOL denies the remaining allegations contained in this paragraph of the Third Amended Complaint.

COUNT 1
Infringement of the 120 Patent

25. AOL incorporates its answers to paragraphs 1 through 24³ as if set forth fully herein.

26. AOL denies the allegations contained in paragraph 24 of the Third Amended Complaint. To the extent the allegations of paragraph 24 are directed to other defendants, AOL lacks sufficient information to admit or deny the allegations and therefore denies them.

27. AOL denies the allegations contained in paragraph 25 of the Third Amended Complaint. To the extent the allegations of paragraph 25 are directed to other defendants, AOL lacks sufficient information to admit or deny the allegations and therefore denies them.

² This is responsive to the second paragraph numbered 22 in the Third Amended Complaint that reads as follows:
At least as early as January 14, 2011, Defendants were aware of the USPTO's statement confirming the validity of the '120 Patent but nevertheless continued their infringing activities. Accordingly, Defendants' infringement has been and continues to be willful.

³ This is inclusive of both paragraphs labeled "22" and "23" in the Third Amended Complaint.

28. AOL denies the allegations contained in paragraph 27⁴ of the Third Amended Complaint. To the extent the allegations of paragraph 27 are directed to other defendants, AOL lacks sufficient information to admit or deny the allegations and therefore denies them.

PRAYER FOR RELIEF

29. AOL denies that Bedrock is entitled to any of the requested relief and denies any allegations in paragraphs 28-38 of its prayer for relief.

ADDITIONAL DEFENSES

30. AOL alleges and asserts the following additional defenses in addition to its other defenses. In addition to the additional defenses described below and subject to its responses above, AOL specifically reserves all rights to allege additional defenses that become known through the course of discovery. By pleading these defenses, AOL does not in any way agree or concede that it has the burden of proof or persuasion on any of these issues.

FIRST ADDITIONAL DEFENSE

31. The claims of the '120 Patent are invalid and/or unenforceable for failure to satisfy one or more of the requirements of 35 U.S.C. and 37 C.F.R., including without limitation 35 U.S.C. §§ 101, 102, 103, 112, 116 and/or 132.

SECOND ADDITIONAL DEFENSE

32. Bedrock's claims of infringement under the '120 Patent are barred, in whole or in part, by the doctrines of waiver, acquiescence, and/or consent.

THIRD ADDITIONAL DEFENSE

33. Bedrock's claims of infringement under the '120 Patent are barred, in whole or in part, by laches.

FOURTH ADDITIONAL DEFENSE

⁴ Bedrock's Third Amended Complaint contains no paragraph 26.

34. Bedrock's claims of infringement under the '120 Patent are barred, in whole or in part, by the doctrine prosecution history estoppel.

FIFTH ADDITIONAL DEFENSE

35. Bedrock's claim for damages are barred, in whole or in part, under 35 U.S.C. § 286 (six year limitation), and/or 35 U.S.C. § 287 (marking).

SIXTH ADDITIONAL DEFENSE

36. Bedrock's claims for relief are barred by license and/or the doctrine of patent exhaustion.

SEVENTH ADDITIONAL DEFENSE

37. Bedrock fails to state a claim on which relief can be granted.

EIGHTH ADDITIONAL DEFENSE

38. AOL does not and has not infringed any valid and enforceable claim of the '120 Patent literally, directly, indirectly, contributorily, by way of inducement, and/or under the doctrine of equivalents.

NINTH ADDITIONAL DEFENSE

39. AOL is not willfully infringing and has not willfully infringed any claim of the '120 Patent.

TENTH ADDITIONAL DEFENSE

40. Bedrock is barred from recovering costs in connection with this action under 35 U.S.C. § 288.

ELEVENTH ADDITIONAL DEFENSE

41. Upon information and belief, Bedrock lacks standing to assert infringement of the '120 Patent because it did not have sufficient rights in the '120 Patent at the time the suit was

filed.

AOL'S COUNTERCLAIMS

Pursuant to Rule 13 of the Federal Rules of Civil Procedure, AOL asserts the following Counterclaims against Bedrock:

PARTIES

1. Counterclaim-Plaintiff AOL is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 770 Broadway, New York, New York 10003.

2. Counterclaim-Defendant Bedrock purports to be a Texas corporation with its principal place of business at 100 E. Ferguson Street, Suite 712, Tyler, TX 75702.

JURISDICTION AND VENUE

3. Subject to AOL's affirmative defenses and denials, AOL alleges that this Court has jurisdiction over the subject matter of these Counterclaims under, without limitation, §§ 1331, 1367, 1338(a), 2201, and 2202.

4. This Court has personal jurisdiction over Bedrock because, *inter alia*, Bedrock is the plaintiff in the underlying action.

5. Venue is proper in this judicial district for AOL's counterclaim against Bedrock's underlying action pursuant to 28 U.S.C. §§ 1391(b)(2) and 1391(c).

FACTUAL BACKGROUND

6. In its Third Amended Complaint for Patent Infringement ("Complaint"), Bedrock asserts that AOL has infringed U.S. Patent No. 5,893,120 (the "120 Patent"). AOL denies Bedrock's allegations of infringement and further denies that the '120 Patent is valid. Consequently, there is an actual case or controversy between the parties over the non-

infringement and/or invalidity of the '120 Patent.

COUNT ONE

Declaratory Judgment of Non-Infringement of U.S. Patent No. 5,893,120

7. AOL restates and incorporates by references it allegations in paragraphs 1 through 6 of its Counterclaims.

8. An actual case or controversy exists between AOL and Bedrock as to whether the '120 Patent is infringed by AOL.

9. AOL seeks a judicial declaration finding that AOL has not infringed and does not infringe any claim of the '120 Patent.

COUNT TWO

Declaratory Judgment of Invalidity of U.S. Patent No. 5,893,120

10. AOL restates and incorporates by reference its allegations in paragraphs 1 through 9 of its Counterclaims.

11. An actual case or controversy exists between AOL and Bedrock as to whether the '120 Patent is invalid.

12. AOL seeks a judicial declaration finding that the '120 Patent is invalid for failure to meet the conditions of patentability and/or otherwise comply with the requirements of Title 35, including but not limited to, §§ 101, 102, 103, 112 and/or 116.

PRAYER FOR RELIEF

Wherefore, AOL prays for judgment as follows:

- a. A judgment in favor of AOL denying Bedrock all relief requested in its Complaint in this action and dismissing Bedrock's Third Amended Complaint for patent infringement with prejudice;
- b. A Judgment in favor of AOL on all its Counterclaims;

- c. A declaration that AOL has not infringed any valid claims of the 120 Patent;
- d. A declaration that the '120 Patent is invalid;
- e. A declaration that this case is exceptional under 35 U.S.C. § 285 and an award to AOL of its reasonable costs and expenses of litigation, including attorneys' fees and expert witness fees;
- f. Such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

In accordance with Rule 38 of the Federal Rules of Civil Procedure and Local Rule CV-38, AOL respectfully demands a jury trial of all issues triable to a jury in this action.

Dated: February 10, 2011

Respectfully submitted,

/s/ Alan L. Whitehurst

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CERTIFICATE OF SERVICE

The undersigned certifies that on this 10th of February, 2011, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document through the Court's CM/ECF system under Local Rule Cv-5(a)(3). Any other counsel of record will be served via first class mail and/or facsimile.

/s/ Alan L. Whitehurst

Alan L. Whitehurst