

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

BEDROCK COMPUTER
TECHNOLOGIES LLC,

Plaintiff,

v.

SOFTLAYER TECHNOLOGIES, INC.,
CITWARE TECHNOLOGY SOLUTIONS,
LLC, GOOGLE INC., YAHOO! INC.,
MYSPACE INC., AMAZON.COM INC.,
PAYPAL INC., MATCH.COM, LLC., AOL
LLC, and CME GROUP INC.,

Defendants.

CASE NO. 6:09-CV-00269

Hon. Leonard E. Davis

JURY TRIAL DEMANDED

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

Defendant Google Inc. (“Google”) answers Plaintiff Bedrock Computer Technologies LLC’s (“Bedrock”) Third Amended Complaint for Patent Infringement¹ (“Third Amended Complaint”) as follows:

PARTIES

1. Google 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 Google, and therefore no answer is required. To the extent a response is required, Google is without knowledge or

¹ Although Bedrock titled its complaint “First Amended Complaint”, it is actually Bedrock’s Third Amended Complaint.

information sufficient to form a belief as to the truth of the allegations of paragraph 2, and therefore denies them.

3. The allegations of paragraph 3 are not directed to Google, and therefore no answer is required. To the extent a response is required, Google 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. Google admits that it is a corporation organized under the laws of the state of Delaware with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, CA 94043. For the purposes of this action only, Google admits that it is doing business in the Eastern District of Texas and elsewhere in the United States. Google denies that it is infringing or has infringed any valid and/or enforceable patent claim and that Bedrock is entitled to any relief therefrom. Google denies all remaining allegations of paragraph 4.

5. The allegations of paragraph 5 are not directed to Google, and therefore no answer is required. To the extent a response is required, Google 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 Google, and therefore no answer is required. To the extent a response is required, Google 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 Google, and therefore no answer is required. To the extent a response is required, Google 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 Google, and therefore no answer is required. To the extent a response is required, Google 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 Google, and therefore no answer is required. To the extent a response is required, Google 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. The allegations of paragraph 10 are not directed to Google, and therefore no answer is required. To the extent a response is required, Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 10, and therefore denies them.

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

JURISDICTION AND VENUE

12. Google admits that Bedrock's Third Amended Complaint alleges infringement under the United States patent laws, and that this Court has subject matter jurisdiction over patent law claims. Consistent with the denial of the allegations of paragraph 16 below, on information and belief, Google 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. Google admits that venue is proper in the Eastern District of Texas for purposes of this particular action only, but states that this case should be transferred to the Northern District of California pursuant to Federal Rule of Civil Procedure § 1404(a).

14. Google admits that it has transacted business in the State of Texas and this District for the purpose of this particular action only, and that this Court has personal jurisdiction over it in this particular action only. Google admits that its website can be accessed in the State of Texas and the Eastern District of Texas. Google denies that it is infringing or has infringed any valid and/or enforceable patent claim and that Bedrock is entitled to any relief therefrom. To the extent any remaining allegations of paragraph 14 are directed at Google, they are denied. To the extent the allegations of paragraph 14 are directed to other defendants, Google lacks sufficient information to admit or deny the allegations and therefore denies them.

GENERAL ALLEGATIONS

15. Google 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.” Google denies that Bedrock holds all right, title and interest in and to the ’120 Patent. Google 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. Google denies any remaining allegations of paragraph 15.

16. Google denies that Bedrock holds all right, title, and interest in and to the ’120 Patent. Google denies that Bedrock possesses all rights to sue and recover for past and future infringement.

17. Google denies that the ’120 Patent is valid and/or enforceable.

18. Google denies that it uses the method and apparatus falling within one or more claims of the ’120 Patent. To the extent the allegations of paragraph 18 are directed to other

defendants, Google lacks sufficient information to admit or deny the allegations and therefore denies them.

19. Google denies that it is infringing or has infringed any valid and/or 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, Google lacks sufficient information to admit or deny the allegations and therefore denies them.

20. Google admits that it was made aware of the '120 Patent upon commencement of this action on June 16, 2009. Google denies that is infringing or has infringed any valid and/or enforceable patent claim and that Bedrock is entitled to any relief therefrom. Google has always had a good faith and objectively reasonable belief that the '120 Patent is invalid and/or noninfringed. Google 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, Google lacks sufficient information to admit or deny the allegations and therefore denies them.

21. Google admits that an *ex parte* reexamination of the '120 Patent was filed with the USPTO on February 9, 2010. Google avers that the first stage response by the USPTO to the reexamination petition was the USPTO declaring the '120 Patent, and all of its claims, invalid. A true and accurate copy of this determination is attached hereto as Exhibit 1.

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

23. Google admits that on January 14, 2011 the USPTO issued a Notice of Intent to Issue Ex Parte Reexamination Certificate, allowing the amendments to the '120 Patent. Google denies that this Notice confirms that the '120 Patent is valid. Google denies that the legal scope of the claims of the '120 Patent is unchanged. Google 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.

24. Google admits that Google became aware of the USPTO's Notice of Intent to Issue Ex Parte Reexamination Certificate on January 14, 2011. Google denies that the '120 Patent is valid. Google denies that it is infringing or has infringed any valid and/or enforceable patent claim and that Bedrock is entitled to any relief therefrom. Google 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, Google lacks sufficient information to admit or deny the allegations and therefore denies them.

COUNT I
Infringement of the '120 Patent

25. Google incorporates its answers to paragraphs 1 through 23³ as if set forth fully herein.

26. Google denies that it is infringing or has infringed any valid and/or enforceable patent claim and that Bedrock is entitled to any relief therefrom. Google therefore denies that it has engaged in any willful infringement of the '120 Patent. To the extent the allegations of

² Bedrock's Complaint contains a numbering error; after paragraphs 22 and 23, the numbering starts again at 22. This Answer is numbered as though the Complaint were properly numbered. This reference to paragraph 22 refers to the second paragraph 22 on page 5 of the Complaint.

³ This includes the second paragraph numbered 22 of the Complaint, as described in the footnote above.

paragraph 24 are directed to other defendants, Google lacks sufficient information to admit or deny the allegations and therefore denies them.

27. Google denies that it is infringing or has infringed any valid and/or enforceable patent claim and that Bedrock is entitled to any relief therefrom. Google therefore denies that it has engaged in any willful infringement of the '120 Patent. Google further denies that it has contributorily infringed or induced others to infringe. To the extent the allegations of paragraph 25 are directed to other defendants, Google lacks sufficient information to admit or deny the allegations and therefore denies them.

28. Google denies that it is infringing or has infringed any valid and/or enforceable patent claim and that Bedrock is entitled to any relief therefrom. Google denies that it has caused any injury and damage to Bedrock and its affiliates. Google therefore denies that it has engaged in any willful infringement of the '120 Patent. To the extent the allegations of paragraph 27⁴ are directed to other defendants, Google lacks sufficient information to admit or deny the allegations and therefore denies them.

PRAYER FOR RELIEF

Google denies that Bedrock is entitled to any of the requested relief and denies any allegations in paragraphs 29 through 39 of its prayer for relief.

⁴ Due to the numbering error, Bedrock's Complaint does not contain a paragraph 26.

AFFIRMATIVE DEFENSES

Google alleges and asserts the following affirmative defenses. In addition to the affirmative defenses described below and subject to its responses above, Google specifically reserves all rights to allege additional affirmative defenses that become known through the course of discovery.

FIRST AFFIRMATIVE DEFENSE: Non-Infringement of the '120 Patent

Google asserts that it does not infringe and has not infringed (not directly, contributorily, by inducement, nor in any other way) literally or under the doctrine of equivalents any claim of the '120 Patent.

SECOND AFFIRMATIVE DEFENSE: Invalidity of the '120 Patent

The claims of the '120 Patent are invalid for failure to satisfy one or more of the requirements of Title 35 of the United States Code including but not limited to §§ 101, 102, 103, 112 and 132.

THIRD AFFIRMATIVE DEFENSE: Waiver, Acquiescence and/or Consent

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.

FOURTH AFFIRMATIVE DEFENSE: Laches

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

FIFTH AFFIRMATIVE DEFENSE: Lack of Standing

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.

SIXTH AFFIRMATIVE DEFENSE: Failure to Join

Bedrock has failed to name or join an indispensable party or parties to the present action, including but not limited to certain persons or entities who may have an ownership interest in the '120 Patent.

SEVENTH AFFIRMATIVE DEFENSE: Bar to Damages

Bedrock's claims for damages are barred, in whole or in part, under 35 U.S.C. § 286 (six year limitation), 35 U.S.C. § 287 (marking), and 28 U.S.C. § 1498 (government manufacture and use).

COUNTERCLAIMS

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

THE PARTIES

1. Counterclaim-Plaintiff Google is a corporation organized and existing under the laws of the state of Delaware with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, CA 94043.
2. Counterclaim-Defendant Bedrock purports to be a Texas corporation with its principal place of business at 100 E. Ferguson Street, Suite 712, Tyler, Texas 75702.

JURISDICTION AND VENUE

3. Subject to Google's affirmative defenses and denials, including those concerning Bedrock's lack of standing, Google alleges that this Court has jurisdiction over the subject matter of these Counterclaims under, without limitation, 28 U.S.C. §§ 1331, 1367, 1338(a), 2201, and 2202.

4. Venue for these Counterclaims is proper in this district, but this case should be transferred to the Northern District of California pursuant to Federal Rule of Civil Procedure § 1404(a).

5. This Court has personal jurisdiction over Bedrock.

FACTUAL BACKGROUND

6. In its Third Amended Complaint, Bedrock asserts that Google has infringed U.S. Patent No. 5,893,120 (the “’120 Patent”). Google 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 invalidity of the ’120 Patent.

7. Bedrock further alleges in its Third Amended Complaint that it holds all right, title, and interest in and to the ’120 Patent and that it possess all rights to sue and recover for past and future infringement. Google disputes each of the allegations, since the idea for the ’120 Patent was created by the named inventor, Dr. Richard Nemes, either jointly or individually, while he was employed by Telcordia’s predecessor, Bellcore. Under Dr. Nemes’ Employee Agreement with Bellcore and a separate patent assignment, Dr. Nemes effected a present assignment of the inventions of the ’120 Patent to Bellcore. Accordingly, when Dr. Nemes was issued the ’120 Patent, it was automatically the property of Bellcore and Dr. Nemes had no power to assign it to Bedrock. Google therefore denies Bedrock’s allegation that it owns the ’120 Patent and that Bedrock has standing to sue for infringement of the ’120 Patent.

COUNT ONE

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

8. Google restates and incorporates by reference its allegations in paragraphs 1 through 7 of its Counterclaims.

9. An actual case or controversy exists between Google and Bedrock as to whether the '120 Patent is not infringed by Google.

10. Google seeks a judicial declaration finding that Google has not infringed and does not infringe, directly or indirectly, any claim of the '120 Patent.

COUNT TWO

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

11. Google restates and incorporates by reference its allegations in paragraphs 1 through 10 of its Counterclaims.

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

13. Google 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, and/or 112.

COUNT THREE

Declaratory Judgment That Bedrock Does Not Own The '120 Patent And Does Not Have Standing To Sue For Infringement of the '120 Patent

14. Google restates and incorporates by reference its allegations in paragraphs 1 through 13 of its Counterclaims.

15. An actual case or controversy exists between Google and Bedrock as to whether Bedrock owns the '120 Patent.

16. Bedrock alleges in its Third Amended Complaint that it holds all right, title, and interest in and to the '120 Patent and that it possess all rights to sue and recover for past and future infringement. Google disputes each of these allegations by Bedrock.

17. The idea for the '120 Patent was created by the named inventor, Dr. Richard Nemes, either jointly or individually, while he was employed by Telcordia's predecessor, Bellcore. Under Dr. Nemes' Employee Agreement with Bellcore and a separate patent assignment, Dr. Nemes effected a present assignment of the inventions of the '120 Patent to Bellcore. Accordingly, when Dr. Nemes was issued the '120 Patent, it was automatically the property of Bellcore and Dr. Nemes had no power to assign it to Bedrock.

18. Google accordingly seeks a judicial declaration finding that Bedrock does not own the '120 Patent and does not have standing to sue for infringement of the '120 Patent.

PRAYER FOR RELIEF

WHEREFORE, Google prays for judgment as follows:

- a. A judgment in favor of Google denying Bedrock all relief requested in its Third Amended Complaint in this action and dismissing Bedrock's Third Amended Complaint with prejudice;
- b. A judgment in favor of Google on all of its Counterclaims;
- c. A declaration that Google has not infringed, either directly or indirectly, any valid claims of the '120 Patent;
- d. A declaration that the '120 Patent is invalid;
- e. A declaration that Bedrock does not own the '120 patents and does not have standing to sue for infringement of the '120 patent;
- f. A declaration that this case is exceptional under 35 U.S.C. § 285 and an award to Google of its reasonable costs and expenses of litigation, including attorneys' fees and expert witness fees;

g. 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, Defendant respectfully demands a jury trial of all issues triable to a jury in this action.

Dated: February 10, 2011

Respectfully submitted,

By: */s/ Evette D. Pennypacker, with permission by
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ATTORNEYS FOR GOOGLE INC. AND
MATCH.COM, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that counsel of record who are deemed to have consented to electronic service are being served with a copy of **DEFENDANT GOOGLE INC.'S ANSWER TO BEDROCK'S THIRD AMENDED COMPLAINT, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND JURY DEMAND**, via the Court's CM/ECF system per Local Rule CV-5(a)(3) on February 10, 2011.

By: /s/ Michael E. Jones
Michael E. Jones