

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

ALOFT MEDIA, LLC,

Plaintiff,

v.

ORACLE CORPORATION, ET AL.,

Defendants.

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Civil Action No. 6:09-CV-304

JURY TRIAL DEMANDED

**DEFENDANT FAIR ISAAC CORP.’S ANSWER AND COUNTERCLAIMS TO
PLAINTIFF’S SECOND AMENDED COMPLAINT**

Defendant Fair Isaac Corporation (“FICO”) answers Plaintiff Aloft Media, LLC’s (“Aloft”) Second Amended Complaint as follows:

PARTIES

1. FICO is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

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

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

4. FICO admits that it is a Delaware corporation. FICO further states that its corporate headquarters are located at 901 Marquette Avenue, Suite 3200, Minneapolis, MN 55402. FICO admits that it may be served with process by serving its registered agent, Corporation Service Company, 701 Brazos Street, Suite 1050, Austin TX 78701. FICO denies the remaining allegations, if any, of paragraph 4.

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

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

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

8. The allegations of paragraph 8 are not directed to FICO, and therefore no answer is required. FICO is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

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

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

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

12. The allegations of paragraph 12 are not directed to FICO, and therefore no answer is required. FICO is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

JURISDICTION AND VENUE

13. FICO admits that the complaint purports to bring an action arising under the patent laws of the United States of America, Title 35 the United States Code § 1, et seq. FICO further admits that this Court has jurisdiction over this action, but denies the legal sufficiency of plaintiff's claims and allegations.

14. FICO admits that venue is proper in this judicial district, but denies that it is committing or has committed any infringement. FICO denies any remaining allegations in paragraph 14.

15. FICO admits that it is subject to personal jurisdiction in this judicial district. FICO denies all other allegations in paragraph 15.

INFRINGEMENT OF U.S. PATENT NO. 7,499,898

16. FICO admits that on its face U.S. Patent No. 7,499,898 (the '898 Patent) is entitled "Decision-Making System, Method and Computer Program Product." FICO admits that the '898 Patent issued on March 3, 2009 and that on its face Aloft Media, L.L.C. is listed as the assignee. FICO is without knowledge or information sufficient to form a belief as to the truth of other allegations in paragraph 16, and therefore denies them.

17. The allegations of paragraph 17 are not directed to FICO, and therefore no answer is required. FICO is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

18. FICO denies the allegations of paragraph 18.

19. The allegations of paragraph 19 are not directed to FICO, and therefore no answer is required. FICO is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

20. The allegations of paragraph 20 are not directed to FICO, and therefore no answer is required. FICO is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

21. The allegations of paragraph 21 are not directed to FICO, and therefore no answer is required. FICO is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

22. The allegations of paragraph 22 are not directed to FICO, and therefore no answer is required. FICO is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

23. The allegations of paragraph 23 are not directed to FICO, and therefore no answer is required. FICO is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

24. The allegations of paragraph 24 are not directed to FICO, and therefore no answer is required. FICO is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

25. FICO is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 25, and therefore denies them.

INFRINGEMENT OF U.S. PATENT NO. 7,593,910

26. FICO admits that on its face U.S. Patent No. 7,593,910 (the '910 Patent) is entitled "Decision-Making System, Method and Computer Program Product." FICO admits that the '910 Patent issued on September 22, 2009 and that on its face Aloft Media, L.L.C. is listed as the assignee. FICO is without knowledge or information sufficient to form a belief as to the truth of other allegations in paragraph 26, and therefore denies them.

27. The allegations of paragraph 27 are not directed to FICO, and therefore no answer is required. FICO is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

28. FICO denies the allegations of paragraph 28.

29. The allegations of paragraph 29 are not directed to FICO, and therefore no answer is required. FICO is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

30. The allegations of paragraph 30 are not directed to FICO, and therefore no answer is required. FICO is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

31. The allegations of paragraph 31 are not directed to FICO, and therefore no answer is required. FICO is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

32. The allegations of paragraph 32 are not directed to FICO, and therefore no answer is required. FICO is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

33. The allegations of paragraph 33 are not directed to FICO, and therefore no answer is required. FICO is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

34. The allegations of paragraph 34 are not directed to FICO, and therefore no answer is required. FICO is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

35. The allegations of paragraph 35 are not directed to FICO, and therefore no answer is required. FICO is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

36. FICO is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 36, and therefore denies them.

37. The allegations of paragraph 37 are not directed to FICO, and therefore no answer is required. FICO is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

PRAYER FOR RELIEF

These paragraphs set forth the statement of relief requested by Aloft to which no response is required. To the extent an answer is required, FICO denies that Aloft is entitled to any of the requested relief and denies any such allegations.

DEMAND FOR JURY TRIAL

This paragraph sets forth Aloft's request for a jury trial to which no response is required. FICO also requests a trial by jury on all issues so triable.

AFFIRMATIVE DEFENSES

38. FICO has not infringed, directly, contributorily, by inducement, or otherwise, literally or under the doctrine of equivalents, any valid and enforceable claim of the '898 Patent or the '910 Patent (if any such claim exists) and is not liable for any acts of infringement of any such claim of the '898 Patent or the '910 Patent.

39. The claims of the '898 Patent and the '910 Patent are invalid under one or more sections of Title 35 of the U.S. Code, including, without limitation, 35 U.S.C. §§ 101, 102, 103, and 112.

40. Upon information and belief, the complaint, and each purported claim alleged therein, fails to state facts upon which relief can be granted against FICO.

41. Should FICO be found to infringe the '898 or '910 Patents, such infringement was not willful.

42. Upon information and belief, by reason of proceedings in the U.S. Patent and Trademark Office during the prosecution of the applications that resulted in the '898 and the '910 Patents, as shown by the file histories, and by reason of the amendment, cancellation, or abandonment of claims, and the admissions and other statements made therein by or on behalf of the patentee(s), Aloft is estopped from claiming a construction of the '898 Patent and the '910 Patent that would cause any valid, enforceable claim thereof to cover or include any method or product manufactured, used, sold, or offered for sale by FICO.

43. Aloft's alleged claims regarding the '898 and '910 Patents are barred by the doctrines of waiver, laches, and/or estoppel.

44. The claims of the '898 Patent and the '910 Patent are unenforceable because of inequitable conduct by the applicants during prosecution of the patents.

45. Michael Kusnic, a named inventor on the '898 Patent and the '910 Patent, was employed as an executive at General Motors ("GM") prior to November 8, 1999.

46. During his employment at GM prior to November 8, 1999, Michael Kusnic had knowledge of a decision analysis process used at GM called "DDP."

47. This DDP process was subsequently described in a book entitled "Meeting of the Minds," whose author, Vincent Barabba was a colleague of Michael Kusnic at GM.

48. Vincent Barabba states on page 84 of his book "Meeting of the Minds" that "Dan Owen made significant contributions to the section on pages 84 through 88." This Dan Owen is a named inventor on the '898 and '910 Patents.

49. Dan Owen had knowledge of DDP prior to November 8, 1999.

50. Neither Dan Owen nor Michael Kusnic provided a copy of the book "Meeting of the Minds" to the Examiner during the prosecution of the '898 Patent.

51. Neither Dan Owen nor Michael Kusnic provided a copy of the book "Meeting of the Minds" to the Examiner during the prosecution of the '910 Patent.

52. During prosecution of the '898 Patent and as indicated in the file history for the '898 patent, the Examiner performed a search for prior art disclosing a decision process and a "tornado diagram."

53. The book "Meeting of the Minds" describes a decision process and shows a "tornado diagram" in Figure 7-8.

54. The book "Meeting of the Minds" also shows a "hybrid solution" on page 197.

55. The book "Meeting of the Minds" also shows a decision hierarchy diagram on page 189.

56. During prosecution of the '910 Patent and as indicated in the file history for the '910 patent, the Examiner performed a search for prior art disclosing both a "tornado diagram" and a "decision hierarchy display."

57. The book "Meeting of the Minds" shows both a tornado diagram and a decision hierarchy display.

58. The inventors, and their representatives, knew or should have known that the book "Meeting of the Minds" was highly material to the prosecution of the '898 and '910 Patents.

59. The only reasonable inference that can be drawn from these facts is that the inventors, and their representatives, withheld from the Examiner the book "Meeting of the Minds" with the intent to deceive the USPTO.

60. The '898 Patent is unenforceable based on the facts described above.

61. The '910 Patent is unenforceable based on the facts described above.

COUNTERCLAIMS

Counterclaim-Plaintiff Fair Isaac Corporation ("Fair Isaac"), for its Counterclaims against Counterclaim-Defendant Aloft Media, LLC ("Aloft") and upon information and belief, states as follows:

I. PARTIES

62. FICO is a Delaware corporation with corporate headquarters located at 901 Marquette Avenue, Suite 3200, Minneapolis, MN 55402.

63. According to paragraph 1 of its Original, First Amended and Second Amended Complaint, "Plaintiff Aloft is a Texas limited liability company with its principal place of business at 211 W. Tyler Street, Suite C-1, Longview, Texas 75601."

II. JURISDICTION AND VENUE

64. This Court has jurisdiction over the subject matter of these Counterclaims under, without limitation, 28 U.S.C. §§ 1331, 1338, 2201, and 2202, and venue for these Counterclaims is proper in this district under at least 28 U.S.C. § 1391.

65. This Court has personal jurisdiction over Aloft because Aloft has submitted itself to the personal jurisdiction of this Court by commencing this action.

III. COUNT ONE

Declaratory Judgment of Non-Infringement of the '898 Patent

66. An actual case or controversy exists between FICO and Aloft as to whether FICO does not infringe United States Patent No. 7,499,898 (“the ‘898 Patent”).

67. A judicial declaration is necessary and appropriate so FICO may ascertain its rights regarding the ‘898 Patent.

68. FICO has not infringed, directly, contributorily, by inducement, or otherwise, literally or under the doctrine of equivalents, any valid and enforceable claim of the ‘898 Patent (if any such claim exists) and is not liable for any acts of infringement of any such claim of the ‘898 Patent.

III. COUNT TWO

Declaratory Judgment of Invalidity of the '898 Patent

69. FICO restates and incorporates by reference its allegations in the previous paragraphs in these Counterclaims.

70. An actual case or controversy exists between FICO and Aloft as to whether the claims of the ‘898 Patent are valid.

71. A judicial declaration is necessary and appropriate so FICO may ascertain its rights as to whether the claims of the ‘898 Patent are valid.

72. The claims of the '898 Patent are invalid for failure to meet the conditions of patentability or otherwise comply with one or more sections of Title 35 of the U.S. Code, including, without limitation, 35 U.S.C. §§ 101, 102, 103 and/or 112.

IV. COUNT THREE

Declaratory Judgment of Non-Infringement of the '910 Patent

73. An actual case or controversy exists between FICO and Aloft as to whether FICO does not infringe United States Patent No. 7,593,910 ("the '910 Patent").

74. A judicial declaration is necessary and appropriate so FICO may ascertain its rights regarding the '910 Patent.

75. FICO has not infringed, directly, contributorily, by inducement, or otherwise, literally or under the doctrine of equivalents, any valid and enforceable claim of the '910 Patent (if any such claim exists) and is not liable for any acts of infringement of any such claim of the '910 Patent.

V. COUNT FOUR

Declaratory Judgment of Invalidity of the '910 Patent

76. FICO restates and incorporates by reference its allegations in the previous paragraphs in these Counterclaims.

77. An actual case or controversy exists between FICO and Aloft as to whether the claims of the '910 Patent are valid.

78. A judicial declaration is necessary and appropriate so FICO may ascertain its rights as to whether the claims of the '910 Patent are valid.

79. The claims of the '910 Patent are invalid for failure to meet the conditions of patentability or otherwise comply with one or more sections of Title 35 of the U.S. Code, including, without limitation, 35 U.S.C. §§ 101, 102, 103 and/or 112.

VI. COUNT FIVE

Declaratory Judgment of Unenforceability of the '898 and '910 Patents

80. FICO restates and incorporates by reference its allegations in the previous paragraphs in these Counterclaims.

81. An actual case or controversy exists between FICO and Aloft as to whether the '898 and '910 Patents are enforceable.

82. A judicial declaration is necessary and appropriate so FICO may ascertain its rights as to whether the claims of the '898 and '910 Patents are enforceable.

83. The claims of the '898 Patent and the '910 Patent are unenforceable because of inequitable conduct by the applicants during prosecution of the patents.

84. Michael Kusnic, a named inventor on the '898 Patent and the '910 Patent, was employed as an executive at General Motors ("GM") prior to November 8, 1999.

85. During his employment at GM prior to November 8, 1999, Michael Kusnic had knowledge of a decision analysis process used at GM called "DDP."

86. This DDP process was subsequently described in a book entitled "Meeting of the Minds," whose author, Vincent Barabba was a colleague of Michael Kusnic at GM.

87. Vincent Barabba states on page 84 of his book "Meeting of the Minds" that "Dan Owen made significant contributions to the section on pages 84 through 88." This Dan Owen is a named inventor on the '898 and '910 Patents.

88. Dan Owen had knowledge of DDP prior to November 8, 1999.

89. Neither Dan Owen nor Michael Kusnic provided a copy of the book "Meeting of the Minds" to the Examiner during the prosecution of the '898 Patent.

90. Neither Dan Owen nor Michael Kusnic provided a copy of the book "Meeting of the Minds" to the Examiner during the prosecution of the '910 Patent.

91. During prosecution of the '898 Patent and as indicated in the file history for the '898 patent, the Examiner performed a search for prior art disclosing a decision process and a "tornado diagram."

92. The book "Meeting of the Minds" describes a decision process and shows a "tornado diagram" in Figure 7-8.

93. The book "Meeting of the Minds" also shows a "hybrid solution" on page 197.

94. The book "Meeting of the Minds" also shows a decision hierarchy diagram on page 189.

95. During prosecution of the '910 Patent and as indicated in the file history for the '910 patent, the Examiner performed a search for prior art disclosing both a "tornado diagram" and a "decision hierarchy display."

96. The book "Meeting of the Minds" shows both a tornado diagram and a decision hierarchy display.

97. The inventors, and their representatives, knew or should have known that the book "Meeting of the Minds" was highly material to the prosecution of the '898 and '910 Patents.

98. The only reasonable inference that can be drawn from these facts is that the inventors, and their representatives, withheld from the Examiner the book "Meeting of the Minds" with the intent to deceive the USPTO.

99. The '898 Patent is unenforceable based on the facts described above.

100. The '910 Patent is unenforceable based on the facts described above.

VII. PRAYER FOR RELIEF

WHEREFORE, FICO prays for judgment as follows:

- a. A judgment dismissing with prejudice Aloft's Second Amended Complaint against FICO and ordering that Aloft take nothing by its complaint;
- b. A judgment in favor of FICO on all of its Counterclaims;
- c. A judgment that the claims of the '898 Patent and '910 Patent are unenforceable.
- d. A declaration that FICO has not infringed directly, contributorily, by inducement, or otherwise, literally or under the doctrine of equivalents, any valid and enforceable claim of the '898 Patent and the '910 Patent and is not liable for any acts of infringement of any such claim of the '898 Patent and the '910 Patent;
- e. A declaration that the claims of the '898 Patent and the '910 Patent are invalid;
- f. A declaration that the '898 and the '910 Patents are unenforceable;
- g. An award of costs to FICO pursuant to 35 U.S.C. § 284;
- h. A finding that this is an exceptional case pursuant to 35 U.S.C. § 285 and an award to FICO of its reasonable attorney fees; and
- i. Such other and further relief as this Court deems just and proper.

VII. DEMAND FOR JURY TRIAL

FICO respectfully demands a trial by jury on all claims and issues so triable.

Dated: March 24, 2010

Respectfully submitted this 24th day of March,
2010,

/s/ Brett C. Govett

Brett C. Govett

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Counsel for Defendant

FAIR ISAAC CORPORATION

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this ANSWER AND COUNTERCLAIMS via the Court's CM/ECF system per Local Rule CV-5(a)(3) on March 24, 2010. Any other counsel of records will be served by U.S. mail on the same date.

/s/ Brett C. Govett _____
Brett C. Govett