



the Complaint as to the other defendants. Perot Systems denies the remaining allegations of this paragraph of the Complaint.

## **I. PARTIES<sup>1</sup>**

1. Perot Systems is without sufficient knowledge or information either to admit or deny the allegations of this paragraph of the Complaint and, therefore, denies the allegations of this paragraph of the Complaint.

2. The allegations of this paragraph of the Complaint relate solely to another defendant. Accordingly, Perot Systems is without sufficient knowledge or information either to admit or deny the allegations of this paragraph of the Complaint and, therefore, denies the allegations of this paragraph of the Complaint.

3. The allegations of this paragraph of the Complaint relate solely to another defendant. Accordingly, Perot Systems is without sufficient knowledge or information either to admit or deny the allegations of this paragraph of the Complaint and, therefore, denies the allegations of this paragraph of the Complaint.

4. The allegations of this paragraph of the Complaint relate solely to another defendant. Accordingly, Perot Systems is without sufficient knowledge or information either to admit or deny the allegations of this paragraph of the Complaint and, therefore, denies the allegations of this paragraph of the Complaint.

5. The allegations of this paragraph of the Complaint relate solely to another defendant. Accordingly, Perot Systems is without sufficient knowledge or information either to

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<sup>1</sup> In its Answer, Perot Systems repeats the headings of the Complaint for ease of reference. No response is necessary to the headings, but to the extent that they allege or imply any improper conduct on the part of Perot Systems, any such averments are denied.

admit or deny the allegations of this paragraph of the Complaint and, therefore, denies the allegations of this paragraph of the Complaint.

6. The allegations of this paragraph of the Complaint relate solely to another defendant. Accordingly, Perot Systems is without sufficient knowledge or information either to admit or deny the allegations of this paragraph of the Complaint and, therefore, denies the allegations of this paragraph of the Complaint.

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15. The allegations of this paragraph of the Complaint relate solely to another defendant. Accordingly, Perot Systems is without sufficient knowledge or information either to admit or deny the allegations of this paragraph of the Complaint and, therefore, denies the allegations of this paragraph of the Complaint.

16. Perot Systems admits the allegations of this paragraph of the Complaint.

17. The allegations of this paragraph of the Complaint relate solely to another defendant. Accordingly, Perot Systems is without sufficient knowledge or information either to

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## **II. JURISDICTION AND VENUE**

24. Perot Systems repeats and incorporates by reference each of the responses to the allegations contained in Paragraphs 1 through 23 above as though fully set forth here.

25. Perot Systems admits that this action involves an allegation of patent infringement under the patent laws of the United States, Title 35, United States Code § 1 *et seq.* Perot Systems admits that this Court has subject matter jurisdiction over this case under 28 U.S.C. §§ 1331 and 1338(a). Perot Systems denies the remaining allegations of this paragraph of the Complaint.

26. Perot Systems admits that Perot Systems is subject to personal jurisdiction in this judicial district in this case. Perot Systems denies that it has infringed the patents-in-suit anywhere, including within the State of Texas and within the Eastern District of Texas. Perot Systems is without sufficient knowledge of the activities of the other defendants to either admit or deny the allegations in this paragraph of the Complaint as to the other defendants and, therefore, denies the allegations of this paragraph of the Complaint as to the other defendants. Perot Systems denies the remaining allegations of this paragraph of the Complaint.

27. Reserving all rights pursuant to 28 U.S.C. § 1404(a), Perot Systems admits that venue is proper in the Eastern District of Texas under 28 U.S.C. §§ 1391(b)-(c). Perot Systems denies that it has committed acts of infringement in this or any judicial district. Perot Systems is without sufficient knowledge of the activities of the other defendants to either admit or deny the

allegations of this paragraph of the Complaint as to the other defendants and, therefore, denies the allegations of this paragraph of the Complaint as to the other defendants.

### **III. ALLEGED PATENT INFRINGEMENT**

28. Perot Systems repeats and incorporates by reference each of the responses to the allegations contained in Paragraphs 1 through 27 above as though fully set forth here.

29. Perot Systems admits that the face of United States Patent No. 5,838,906 (“the ’906 Patent”) indicates that its title is “Distributed hypermedia method for automatically invoking external application providing interaction and display of embedded objects within a hypermedia document” and that it issued on November 17, 1998. Perot Systems admits that the face of United States Patent No. 7,599,985 (“the ’985 Patent”) indicates that its title is “Distributed hypermedia method and system for automatically invoking external application providing interaction and display of embedded objects within a hypermedia document” and that it issued on October 6, 2009. Perot Systems admits that the ’906 Patent and the ’985 Patent may be collectively referred to hereafter as “the patents.” Perot Systems is without sufficient knowledge or information to either admit or deny the remaining allegations of this paragraph of the Complaint and, therefore, denies the remaining allegations of this paragraph of the Complaint.

30. Perot Systems is without sufficient knowledge or information to either admit or deny the allegations of this paragraph of the Complaint and, therefore, denies the allegations of this paragraph of the Complaint.

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45. Perot Systems denies the allegations of this paragraph of the Complaint.

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52. The allegations of this paragraph of the Complaint relate solely to another defendant. Accordingly, Perot Systems is without sufficient knowledge or information to either admit or deny the allegations of this paragraph of the Complaint and, therefore, denies the allegations of this paragraph of the Complaint.

53. Perot Systems denies the allegations set forth in this paragraph of the Complaint with respect to Perot Systems. Perot Systems is without sufficient knowledge or information to either admit or deny the allegations of this paragraph of the Complaint as to the other defendants and, therefore, denies the allegations of this paragraph of the Complaint as to the other defendants.

54. Perot Systems denies the allegations set forth in this paragraph of the Complaint with respect to Perot Systems. Perot Systems is without sufficient knowledge or information

either to admit or deny the allegations of this paragraph of the Complaint as to the other defendants and, therefore, denies the allegations of this paragraph of the Complaint as to the other defendants.

55. Perot Systems denies the allegations set forth in this paragraph of the Complaint with respect to Perot Systems. Perot Systems is without sufficient knowledge or information either to admit or deny the allegations of this paragraph of the Complaint as to the other defendants and, therefore, denies the allegations of this paragraph of the Complaint as to the other defendants.

56. Perot Systems denies the allegations set forth in this paragraph of the Complaint with respect to Perot Systems. Perot Systems is without sufficient knowledge or information either to admit or deny the allegations of this paragraph of the Complaint as to the other defendants and, therefore, denies the allegations of this paragraph of the Complaint as to the other defendants.

#### **IV. PLAINTIFF'S PRAYER FOR RELIEF**

Perot Systems denies that Plaintiff is entitled to be awarded any of the relief sought in Paragraphs A-E of its Prayer for Relief against Perot Systems. Plaintiff's Prayer for Relief with regard to Perot Systems should, therefore, be denied in its entirety and with prejudice, and Plaintiff should take nothing. With respect to the other defendants, Perot Systems is without sufficient knowledge or information to form a belief as to whether Plaintiff is entitled to the relief sought or any relief whatsoever, and on that basis denies the same.

#### **V. PLAINTIFF'S DEMAND FOR JURY TRIAL**

57. Perot Systems admits that the Plaintiff has demanded that all issues be determined by a jury.

#### **VI. ADDITIONAL DEFENSES**

58. Perot Systems repeats and incorporates by reference each of the responses to the allegations contained in Paragraphs 1 through 57 above as though fully set forth here. Perot Systems asserts the following additional defenses.

59. Plaintiff has failed to state a claim upon which relief can be granted.

60. Perot Systems does not and has not infringed (literally or by equivalents), contributed to the infringement of, induced infringement of, or willfully infringed any valid claim of the '906 Patent.

61. Perot Systems does not and has not infringed (literally or by equivalents), contributed to the infringement of, induced infringement of, or willfully infringed any valid claim of the '985 Patent.

62. The claims of the '906 Patent are invalid for failure to comply with the one or more of the requirements of Title 35 of the United States Code, including, without limitation, 35 U.S.C. §§ 41, 101, 102, 103, 112, 115, 116 and/or 256.

63. The claims of the '985 Patent are invalid for failure to comply with the one or more of the requirements of Title 35 of the United States Code, including, without limitation, 35 U.S.C. §§ 41, 101, 102, 103, 112, 115, 116 and/or 256.

64. By reason of proceedings in the United States Patent and Trademark Office, and by reasons of the statements, admissions, and/or amendments made by the applicants or on the applicants' behalf, Plaintiff is estopped from construing any claim of the '906 Patent to cover any Perot Systems product or service that is alleged to infringe the '906 Patent.

65. By reason of proceedings in the United States Patent and Trademark Office, and by reasons of the statements, admissions, and/or amendments made by the applicants or on the applicants' behalf, Plaintiff is estopped from construing any claim of the '985 Patent to cover any Perot Systems product or service that is alleged to infringe the '985 Patent.

66. Plaintiff's claims regarding the '906 Patent are barred, in whole or in part, under the doctrines of laches and/or waiver.

67. Plaintiff's claims regarding the '906 Patent are barred, in whole or in part, under the doctrine of estoppel.

68. Plaintiff's claims regarding the '985 Patent are barred, in whole or in part, under the doctrine of estoppel.

69. On information and belief, Perot Systems enjoys an actual and/or an implied license to the '906 Patent.

70. On information and belief, Perot Systems enjoys an actual and/or an implied license to the '985 Patent.

71. Plaintiff's claims regarding the '906 Patent are barred, in whole or in part, by a covenant not to sue.

72. Plaintiff's claims regarding the '985 Patent are barred, in whole or in part, by a covenant not to sue.

73. Plaintiff's claims regarding the '906 Patent are barred, in whole or in part, by a release.

74. Plaintiff's claims regarding the '985 Patent are barred, in whole or in part, by a release.

75. Plaintiff's claims regarding the '906 Patent are barred, in whole or in part, under the doctrines of exhaustion and/or the full compensation rule.

76. Plaintiff's claims regarding the '985 Patent are barred, in whole or in part, under the doctrines of exhaustion and/or the full compensation rule.

77. Plaintiff's claims for relief regarding the '906 Patent are limited due to legal and/or equitable intervening rights under 35 U.S.C. §§ 252 and 307(b).

78. The Plaintiff is prohibited from recovering damages for activities alleged to have occurred before Plaintiff complies with 35 U.S.C. § 287 with respect to the '906 Patent.

79. The Plaintiff is prohibited from recovering damages for activities alleged to have occurred before Plaintiff complies with 35 U.S.C. § 287 with respect to the '985 Patent.

80. The Plaintiff is prohibited from recovering damages for activities alleged to have occurred before Plaintiff provides actual notice of the '906 Patent and the specific activities alleged to infringe.

81. The Plaintiff is prohibited from recovering damages for activities alleged to have occurred before Plaintiff provides actual notice of the '985 Patent and the specific activities alleged to infringe.

82. Pursuant to 35 U.S.C. § 286, Plaintiff's claims are barred in whole or in part for all events occurring more than six years prior to the filing of this action.

83. The Plaintiff is not entitled to injunctive relief because any injury to the Plaintiff is not immediate or irreparable, and the Plaintiff has an adequate remedy at law.

84. Perot Systems hereby reserves the right to assert further additional defenses and/or counterclaims, including allegations of inequitable conduct, consistent with the facts discovered in this case.

### **COUNTERCLAIMS**

Perot Systems counterclaims against Plaintiff for declaratory judgment and alleges the following:

#### **I. PARTIES**

85. Perot Systems is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 2300 West Plano Parkway, Plano, Texas 75075-8499.

86. On information and belief, Plaintiff is a corporation organized and existing under the laws of Texas, with its principal place of business at 313 East Charnwood Street, Tyler, Texas 75701.

#### **II. JURISDICTION AND VENUE**

87. The counterclaims herein include claims for declaratory judgment of patent non-infringement and patent invalidity. Thus, jurisdiction is proper under the Federal Declaratory



Judgment Act, 28 U.S.C. §§ 2201 and 2202, the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, concerning actions related to patents, and 28 U.S.C. §§ 1331, 1338, and 2201(a).

88. Venue is proper in this Court under 28 U.S.C. § 1391.

89. This Court has personal jurisdiction over Plaintiff by virtue of Plaintiff's filing of the Complaint against Perot Systems in this Court.

### **III. GENERAL ALLEGATIONS**

90. On October 6, 2009, Plaintiff filed the Complaint naming Perot Systems as a defendant.

91. Plaintiff has alleged that Perot Systems infringes the '906 Patent.

92. Plaintiff has alleged that Perot Systems infringes the '985 Patent.

93. An actual and justiciable case or controversy has arisen and presently exists between Plaintiff and Perot Systems to which Perot Systems desires a declaration of rights pursuant to 28 U.S.C. § 2201(a) and Rule 57 of the Federal Rules of Civil Procedure.

### **IV. DECLARATORY RELIEF REGARDING NON-INFRINGEMENT OF THE '906 PATENT**

94. Perot Systems does not and has not infringed (literally or by equivalents), contributed to the infringement of, induced infringement of, or willfully infringed any valid claim of the '906 Patent.

95. Perot Systems is entitled to a declaratory judgment that it is not infringing any valid claim of the '906 Patent literally or under the Doctrine of Equivalents, that it is not infringing any valid claim of the '906 Patent contributorily, that it is not inducing infringement of any valid claim of the '906 Patent, and that it is not willfully infringing any valid claim of the '906 Patent. Perot Systems is further entitled to a declaratory judgment that it has not previously infringed any valid claim of the '906 Patent literally or under the Doctrine of Equivalents, that it

has not previously infringed any valid claim of the '906 Patent contributorily, that it has not previously induced infringement of any valid claim of the '906 Patent, and that it has not willfully infringed any valid claim of the '906 Patent.

**V. DECLARATORY RELIEF REGARDING  
NON-INFRINGEMENT OF THE '985 PATENT**

96. Perot Systems does not and has not infringed (literally or by equivalents), contributed to the infringement of, induced infringement of, or willfully infringed any valid claim of the '985 Patent.

97. Perot Systems is entitled to a declaratory judgment that it is not infringing any valid claim of the '985 Patent literally or under the Doctrine of Equivalents, that it is not infringing any valid claim of the '985 Patent contributorily, that it is not inducing infringement of any valid claim of the '985 Patent, and that it is not willfully infringing any valid claim of the '985 Patent. Perot Systems is further entitled to a declaratory judgment that it has not previously infringed any valid claim of the '985 Patent literally or under the Doctrine of Equivalents, that it has not previously infringed any valid claim of the '985 Patent contributorily, that it has not previously induced infringement of any valid claim of the '985 Patent, and that it has not willfully infringed any valid claim of the '985 Patent.

**VI. DECLARATORY RELIEF REGARDING  
INVALIDITY OF THE '906 PATENT**

98. The claims of the '906 Patent are invalid for failure to comply with one or more of the requirements of Title 35 of the United States Code, including, without limitation, 35 U.S.C. §§ 41, 101, 102, 103, 112, 115, 116 and/or 256.

99. Perot Systems is entitled to a declaratory judgment that the claims of the '906 Patent are invalid.

**VII. DECLARATORY RELIEF REGARDING  
INVALIDITY OF THE '985 PATENT**

100. The claims of the '985 Patent are invalid for failure to comply with one or more of the requirements of Title 35 of the United States Code, including, without limitation, 35 U.S.C. §§ 41, 101, 102, 103, 112, 115, 116 and/or 256.

101. Perot Systems is entitled to a declaratory judgment that the claims of the '985 Patent are invalid.

102. This action qualifies as an exceptional case, supporting an award of reasonable attorneys' fees, costs, expenses, and prejudgment interest for Perot Systems against Plaintiff pursuant to 35 U.S.C. § 285.

**VIII. PEROT SYSTEMS'S PRAYER FOR RELIEF**

WHEREFORE, Perot Systems respectfully prays that this Court:

A. Dismiss the Complaint with prejudice in its entirety and award Plaintiff nothing by its Complaint;

B. Adjudge, declare, and decree that Perot Systems has not infringed (literally or by equivalents), and is not infringing (literally or by equivalents), any valid claim of the '906 Patent;

C. Adjudge, declare, and decree that Perot Systems has not induced, and is not inducing, infringement of any valid claim of the '906 Patent;

D. Adjudge, declare, and decree that Perot Systems has not contributed to, and is not contributing to, infringement of any valid claim of the '906 Patent;

E. Adjudge, declare, and decree that Perot Systems has not willfully infringed, and is not willfully infringing, any valid claim of the '906 Patent;

F. Adjudge, declare, and decree that the claims of the '906 Patent are invalid;

G. Permanently enjoin Plaintiff, its successors, and assigns, and anyone acting in concert therewith or on its behalf, from attempting to enforce the '906 Patent against Perot Systems or any parent, affiliate, or subsidiary of Perot Systems, or its respective officers, agents, employees, successors, and assigns;

H. Adjudge, declare, and decree that Perot Systems has not infringed (literally or by equivalents), and is not infringing (literally or by equivalents), any valid claim of the '985 Patent;

I. Adjudge, declare, and decree that Perot Systems has not induced, and is not inducing, infringement of any valid claim of the '985 Patent;

J. Adjudge, declare, and decree that Perot Systems has not contributed to, and is not contributing to, infringement of any valid claim of the '985 Patent;

K. Adjudge, declare, and decree that Perot Systems has not willfully infringed, and is not willfully infringing, any valid claim of the '985 Patent;

L. Adjudge, declare, and decree that the claims of the '985 Patent are invalid;

M. Permanently enjoin Plaintiff, its successors, and assigns, and anyone acting in concert therewith or on its behalf, from attempting to enforce the '985 Patent against Perot Systems or any parent, affiliate, or subsidiary of Perot Systems, or its respective officers, agents, employees, successors, and assigns;

N. Enter a judgment against Plaintiff and in favor of Perot Systems in all respects;

O. Find this case exceptional and award reasonable attorneys' fees, costs, expenses, and prejudgment interest to Perot Systems pursuant to 35 U.S.C. § 285;

P. Award the costs of this case to Perot Systems; and

Q. Award to Perot Systems any further general or special relief to which Perot Systems is entitled.

**IX. PEROT SYSTEMS'S JURY DEMAND**

Perot Systems demands a trial by jury of all issues so triable pursuant to Federal Rule of Civil Procedure 38.

Dated: June 7, 2010

Respectfully submitted,

/s/ Barton E. Showalter

Barton E. Showalter

Attorney-in-Charge

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**ATTORNEYS FOR DEFENDANT  
PEROT SYSTEMS CORPORATION**

**CERTIFICATE OF SERVICE  
PURSUANT TO LOCAL RULE CV-5(D)**

I hereby certify that counsel of record who are deemed to have consented to electronic service are being served this 7th day of June, 2010, with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by electronic mail and first class mail on this same date.

/s/ Barton E. Showalter

Barton E. Showalter