

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

STRAGENT, LLC, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	Case No. 6:10-CV-242-LED
v.)	
)	
CLASSMATES ONLINE, INC., <i>et al.</i> ,)	JURY TRIAL DEMANDED
)	
Defendants.)	
)	
)	

**DEFENDANT GANNETT CO., INC.'S ANSWER,
AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS**

Gannett Co., Inc. (“Gannett”) by and through its attorneys, submits the following Answer, Affirmative Defenses, and Counterclaims in response to the Second Amended Complaint for Patent Infringement (“the Second Amended Complaint”) filed by Stragent, LLC (“Stragent”) and Seesaw Foundation (“SeeSaw,” together with Stragent, “Plaintiffs”) on September 17, 2010.

ANSWER TO SECOND AMENDED

COMPLAINT FOR PATENT INFRINGEMENT

Gannett admits that the Second Amended Complaint purports to state a claim for patent infringement, but denies that such a claim is adequately stated. Gannett denies any and all remaining allegations and/or legal conclusions contained in the “Second Amended Complaint” paragraph, and specifically denies any wrongdoing or infringement, in this judicial district or elsewhere.

PARTIES

1. Gannett lacks knowledge and information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 1 and, on that basis, denies such allegations.

2. Gannett lacks knowledge and information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 2 and, on that basis, denies such allegations.

3. Gannett lacks knowledge and information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 3 and, on that basis, denies such allegations.

4. Gannett lacks knowledge and information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 4 and, on that basis, denies such allegations.

5. Gannett lacks knowledge and information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 5 and, on that basis, denies such allegations.

6. Gannett lacks knowledge and information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 6 and, on that basis, denies such allegations.

7. Gannett admits that it is a corporation organized under the laws of Delaware. Gannett admits that its principal place of business is in McLean, Virginia.

8. Gannett lacks knowledge and information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 8 and, on that basis, denies such allegations.

9. Gannett lacks knowledge and information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 9 and, on that basis, denies such allegations.

10. Gannett lacks knowledge and information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 10 and, on that basis, denies such allegations.

11. Gannett lacks knowledge and information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 11 and, on that basis, denies such allegations.

12. Gannett lacks knowledge and information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 12 and, on that basis, denies such allegations.

13. Gannett lacks knowledge and information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 13 and, on that basis, denies such allegations.

JURISDICTION AND VENUE

14. Gannett admits that Plaintiffs purport to state a claim for patent infringement under Title 35 of the United States Code. However, Gannett denies that the Second Amended Complaint properly states such claims, and specifically denies any wrongdoing or infringement. Gannett admits that Plaintiffs purport to base federal jurisdiction under 28 U.S.C. §§ 1331 and 1338(a). Gannett denies any and all remaining allegations and/or legal conclusions contained in Paragraph 14.

15. As to Gannett, Gannett denies that venue is proper in this district, and reserves its rights to move the Court to transfer this action to another venue pursuant to 28 U.S.C. § 1404. Gannett denies any wrongdoing or infringement, in this judicial district or elsewhere. Gannett lacks sufficient knowledge or information to admit or deny the remaining allegations of Paragraph 15, and on that basis, denies each and every remaining allegation contained therein.

16. Gannett denies the allegations contained in Paragraph 16 directed toward Gannett. Gannett lacks sufficient knowledge or information to admit or deny the remaining allegations of Paragraph 16, and on that basis, denies each and every remaining allegation contained therein.

INFRINGEMENT OF U.S. PATENT NO. 6,665,722

17. Gannett denies that U.S. Patent No. 6,665,722 (the “‘722 Patent”) was “duly and legally issued.” Gannett admits that according to the face of the ‘722 Patent, a copy of which is attached as Exhibit A to the Second Amended Complaint, the ‘722 Patent is entitled “Store-and-

forward packet radio system and method.” Gannett lacks knowledge and information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 17 and, on that basis, denies such allegations.

18. Gannett lacks knowledge and information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 18 and, on that basis, denies such allegations.

19. Gannett lacks knowledge and information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 19 and, on that basis, denies such allegations.

20. Gannett lacks knowledge and information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 20 and, on that basis, denies such allegations.

21. Gannett denies all allegations contained in Paragraph 21 and specifically denies any wrongdoing or infringement.

22. Gannett denies all allegations contained in Paragraph 22 and specifically denies any wrongdoing or infringement.

23. Gannett lacks knowledge and information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 23 and, on that basis, denies such allegations.

24. Gannett lacks knowledge and information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 24 and, on that basis, denies such allegations.

25. Gannett lacks knowledge and information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 25 and, on that basis, denies such allegations.

26. Gannett lacks knowledge and information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 26 and, on that basis, denies such allegations.

27. Gannett lacks knowledge and information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 27 and, on that basis, denies such allegations.

28. Gannett lacks knowledge and information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 28 and, on that basis, denies such allegations.

29. Gannett lacks knowledge and information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 29 and, on that basis, denies such allegations.

30. Gannett lacks knowledge and information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 30 and, on that basis, denies such allegations.

31. As to Gannett, Gannett denies that Plaintiffs have suffered monetary damages as a result of any alleged infringement by Gannett, and denies any wrongdoing or infringement, in this judicial district or elsewhere. Gannett further denies that the '722 Patent is valid and/or enforceable. Gannett lacks knowledge and information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 31 and, on that basis, denies such allegations.

PRAYER FOR RELIEF

WHEREFORE, Gannett denies that any conduct on its part subjects Gannett to liability for damages or attorneys' fees under 35 U.S.C. § 284 or any other statute, and Gannett further denies that Plaintiffs are entitled to any relief whatsoever.

JURY DEMAND

In accordance with Rule 38 of the Federal Rules of Civil Procedure and Local Rule CV-38, Gannett demands a trial by jury for all issues so triable.

AFFIRMATIVE DEFENSES

Gannett alleges and asserts the following defenses, affirmative or otherwise, without assuming any burden of proof that it would not otherwise have. In addition to the affirmative defenses described below and subject to its responses above, Gannett specifically reserves all

rights to allege additional defenses, affirmative or otherwise, that become known through the course of discovery.

FIRST AFFIRMATIVE DEFENSE

(FAILURE TO STATE A CLAIM)

1. Plaintiffs' Second Amended Complaint fails to state a claim upon which relief can be granted, including, but not limited to, because Plaintiffs' Second Amended Complaint fails to meet the standard for pleading set by the Supreme Court in *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009), and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007).

SECOND AFFIRMATIVE DEFENSE

(INVALIDITY)

2. The '722 Patent is invalid, unenforceable, and/or void for failure to comply with one or more of the requirements of the Patent Laws of the United States, 35 U.S.C. §§ 100, *et seq.*, including, but not limited to, §§ 101, 102, 103, 112, 116 and 132.

THIRD AFFIRMATIVE DEFENSE

(NON-INFRINGEMENT)

3. Gannett has not directly infringed or contributed to the infringement of any claim of the '722 Patent through any of its products, services, or processes.

FOURTH AFFIRMATIVE DEFENSE

(LACHES)

4. Plaintiffs' claims and remedies are barred in whole or in part by the doctrine of laches.

FIFTH AFFIRMATIVE DEFENSE

(ADEQUATE REMEDY AT LAW)

5. To the extent that the Second Amended Complaint could be read to request injunctive relief, the relief Plaintiffs seek is barred because, if Plaintiffs are entitled to any relief, Plaintiffs have an adequate remedy at law.

SIXTH AFFIRMATIVE DEFENSE

(FAILURE TO GIVE NOTICE)

6. To the extent that Plaintiffs seek damages for alleged infringement prior to their giving actual or constructive notice of the '722 Patent to Gannett, the relief Plaintiffs seek is limited by 35 U.S.C. § 287.

SEVENTH AFFIRMATIVE DEFENSE

(STATUTORY DAMAGES LIMITATION)

7. Plaintiffs' claims for damages are statutorily limited or barred by 35 U.S.C. §§ 286.

EIGHTH AFFIRMATIVE DEFENSE

(LICENSE)

8. The relief sought by Plaintiffs is barred in whole or in part because Gannett's actions are licensed under the '722 Patent.

NINTH AFFIRMATIVE DEFENSE

(PATENT EXHAUSTION OR IMPLIED LICENSE)

9. Plaintiffs have authorized the sale of components by third parties such that their patent rights have been exhausted, and such that they have at least impliedly authorized

Gannett's manufacture, sale, offer for sale, or importation of products containing or utilizing such components.

TENTH AFFIRMATIVE DEFENSE
(CLAIM CONSTRUCTION ESTOPPEL)

10. Plaintiffs are estopped from construing the '722 Patent to cover any of Gannett's products or services because representations, omissions, and/or concessions made during prosecution of the '722 Patent and/or related U.S. or foreign patents and patent applications, limit the scope of the claims of the '722 Patent.

ELEVENTH AFFIRMATIVE DEFENSE
(PROSECUTION HISTORY ESTOPPEL)

11. Prosecution history estoppel bars Plaintiffs from asserting infringement under the doctrine of equivalents and from adopting claim construction positions contrary to statements and amendments made during prosecution of the '722 patent and/or related U.S. or foreign patents and patent applications.

TWELFTH AFFIRMATIVE DEFENSE
(UNCLEAN HANDS)

12. Plaintiffs are barred from seeking equitable relief from the Court by their unclean hands.

THIRTEENTH AFFIRMATIVE DEFENSE
(WAIVER, ACQUIESCENCE, OR CONSENT)

13. Plaintiffs' remedies under the '722 Patent are barred by the doctrines of waiver, acquiescence, and/or consent.

FOURTEENTH AFFIRMATIVE DEFENSE
(LACK OF PERSONAL JURISDICTION)

14. The Court lacks personal jurisdiction over Gannett.

WHEREFORE, Gannett denies that any of its products, services, or processes infringes any claim of the '722 Patent, and further denies that Plaintiffs are entitled to any judgment against Gannett whatsoever. Gannett asks that Plaintiffs' Second Amended Complaint be dismissed with prejudice, that judgment be entered for Gannett, and that Gannett be awarded its costs and attorneys' fees incurred in defending against Plaintiffs' Second Amended Complaint, together with such other relief the Court deems appropriate.

COUNTERCLAIMS

Counter-plaintiff Gannett hereby states its Counterclaims against Stragent and Seesaw as follows:

JURISDICTION AND THE PARTIES

1. Gannett is a Delaware corporation with its principal place of business in McLean, Virginia.
2. According to the allegations of the Second Amended Complaint, Stragent is a limited liability company organized under the laws of Texas with its principal place of business in Longview, Texas.
3. According to the allegations of the Second Amended Complaint, SeeSaw is a non-profit corporation organized under the laws of Texas with its principal place of business in Longview, Texas.

4. This is an action for Declaratory Relief for which this Court has jurisdiction under Title 35 of the United States Code as well as under 28 U.S.C. §§ 1331, 1338, and 2201.

5. Venue is proper in this District because Stragent and SeeSaw have asserted a Second Amended Complaint for patent infringement in this District, in response to which these Counterclaims are asserted.

FIRST COUNTERCLAIM

(NON-INFRINGEMENT OF U.S. PATENT NO. 6,665,722)

6. Gannett repeats and re-alleges Paragraphs 1 through 5 above as if fully set forth herein.

7. By the filing of its Second Amended Complaint, Stragent and SeeSaw have purported to assert claims against Gannett for the alleged infringement of the '722 Patent.

8. Gannett has denied Stragent and SeeSaw's claims of infringement and believes that the Second Amended Complaint has been filed without good cause.

9. An actual controversy has arisen between Gannett, on the one hand, and Stragent and SeeSaw, on the other hand, concerning the infringement of the '722 Patent.

10. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*, Gannett is entitled to judgment from this Court finding that the '722 Patent is not infringed by any of Gannett's products, services, or processes.

SECOND COUNTERCLAIM

(INVALIDITY OF U.S. PATENT NO. 6,665,722 PURSUANT TO 35 U.S.C. §§ 101, *et seq.*)

11. Gannett repeats and re-alleges Paragraphs 1 through 10 above as if fully set forth herein.

12. Gannett has denied that the ‘722 Patent is valid and has asserted that the patent is invalid pursuant to 35 U.S.C. §§ 101, *et seq.*

13. As a result, Gannett is entitled to judgment from this Court finding that the ‘722 Patent is invalid pursuant to 35 U.S.C. §§ 101, *et seq.*

PRAYER FOR RELIEF

WHEREFORE, Gannett prays for relief as follows:

A. For a declaratory judgment that the ‘722 Patent, and each and every asserted claim thereof, be declared not infringed by Gannett and/or invalid;

B. That the Second Amended Complaint be dismissed with prejudice, with Stragent and SeeSaw taking nothing;

C. That pursuant to 35 U.S.C. § 285, Fed. R. Civ. Proc. 11, and/or other applicable authority, Stragent and SeeSaw be ordered to pay all of Gannett’s reasonable attorneys’ fees in this action because this is an exceptional case;

D. That Gannett be awarded its cost of suit; and

E. That Gannett be awarded such other relief as the Court shall deem just and reasonable.

DATED: October 4, 2010

Respectfully submitted,

/s/ Emily Kalanithi

(with permission by Michael E. Jones)

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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who have consented to electronic service and are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on October 4, 2010. Any other counsel of record will be served by First Class U.S. mail on this same date.

/s/ Michael E. Jones
Michael E. Jones